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JOINT
COMMITTEE
ON
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RULES



1990 ANNUAL REPORT
OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Submitted to the Members of the
General Assembly of the State of Illinois

Membership

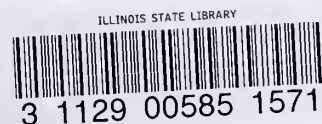
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Senator Laura K. Donahue, Vice Chairman
Representative Monroe Flinn, Secretary

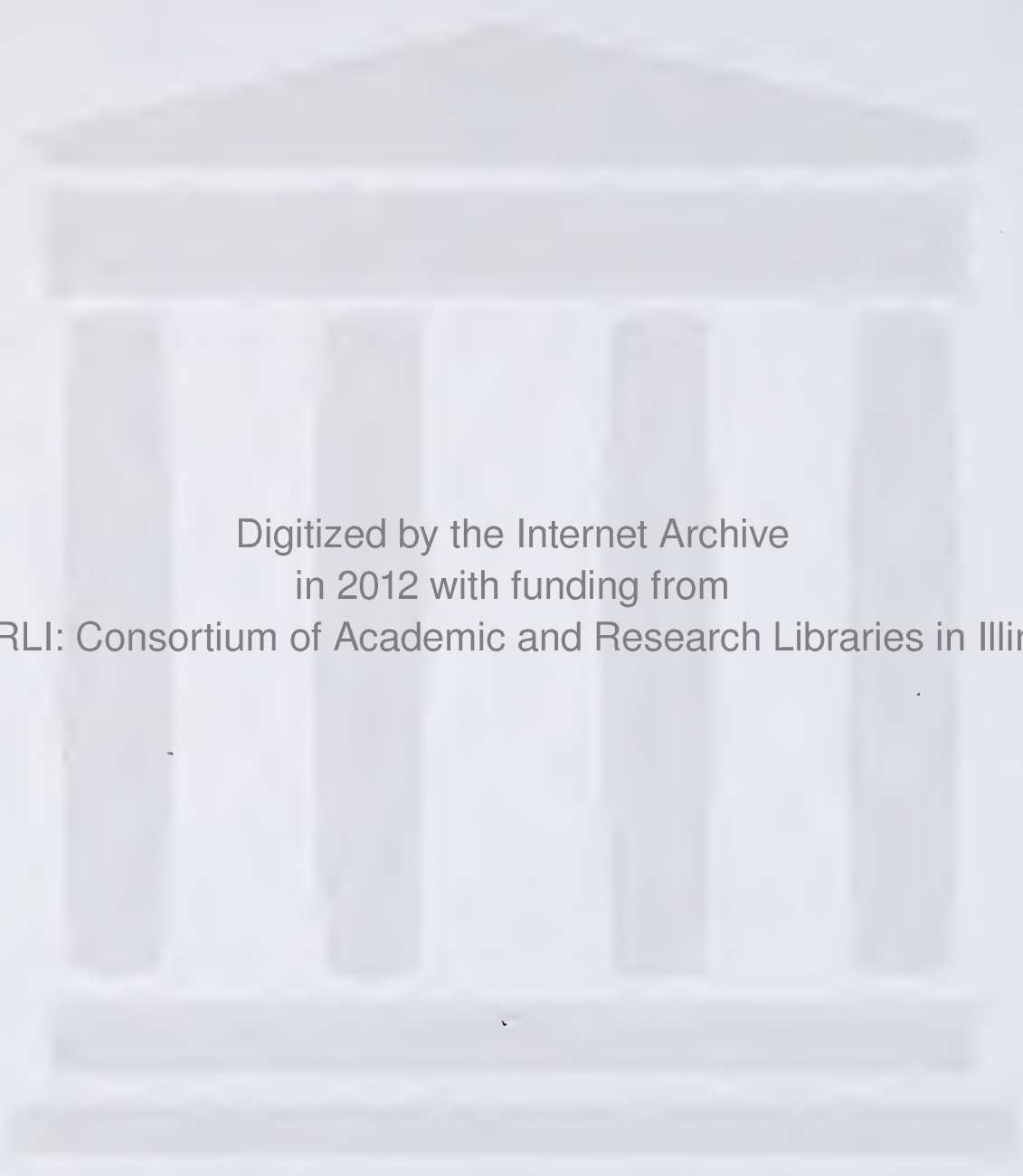
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Representative Ellis B. Levin
Representative Larry Wennlund
Representative Tom Ryder
Senator Thomas A. Dunn
Senator Beverly Fawell
Senator William L. O'Daniel
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April 1, 1991





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ANNUAL REPORT

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY



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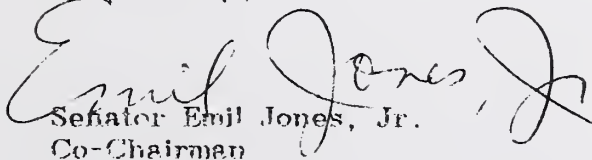
HONORABLE MEMBERS OF THE 87TH GENERAL ASSEMBLY

Ladies and Gentlemen:

I hereby submit the 1990 Annual Report of the Joint Committee on Administrative Rules. As Co-Chairman of the Committee, I would like to report the continued progress of the oversight process in Illinois. An overview of the Committee's rules review activities can be found in the following pages.

The Joint Committee on Administrative Rules gratefully acknowledges your continued support and assistance, and we encourage all members of the General Assembly to take an active role in this vital oversight function which guarantees that the public right to know is protected through the promulgation of specific rules that are applied equally to everyone regulated. I welcome your suggestions and comments on agency rules and the development of the role of the Committee. Only as each elected representative becomes concerned and involved in the oversight process can the Committee ensure that the intent of the legislation we pass is maintained.

Respectfully,


Senator Emil Jones, Jr.
Co-Chairman

1990 ANNUAL REPORT

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INTRODUCTION

The Joint Committee on Administrative Rules was created by the Illinois General Assembly in 1977 as a mechanism for legislative oversight of the rulemaking process in Illinois. The Illinois Administrative Procedure Act summarizes the Committee's role as the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This provision established the Committee's two major functions: (1) working with State agencies to improve the rulemaking process and agencies' rules, and (2) promoting public understanding of rules and the rulemaking process.

The Joint Committee on Administrative Rules was established as a legislative support services agency by the Legislative Commission Reorganization Act of 1984. The Committee's principal programs and activities include:

- Review of general rulemakings within statutory time periods to ensure that new rulemaking proposals are within the agency's statutory authority, are legally proper, and meet the procedural requirements of the Illinois Administrative Procedure Act.
- Review of emergency and peremptory rulemakings to ensure that these rules comply with the statutory requirements because these rules are not subject to the public comment period.
- Review of agency rules and policies to determine whether agency rules have been properly promulgated, and whether rules are unauthorized or unreasonable, or result in serious impact upon the public.
- Public Act review to determine the necessity for new or amendatory rulemaking in response to legislative changes.
- Legislative activities which ensure that the requirements of the Illinois Administrative Procedure Act are followed.
- Publication of "Illinois Regulation", a weekly newsletter that highlights State agency rulemaking activities.

This Annual Report contains a narrative of the Committee's activities during 1990, as well as a statistical summary of the rulemaking activities of State agencies. It also includes a summary of legislation drafted and sponsored by the Committee, including legislation amending the Illinois Administrative Procedure Act, that was introduced or passed during the 1990 session of the 86th General Assembly. All Committee legislation is the result of the review of State agency rules. Appendix A contains a historical overview of the Committee as well as pertinent historical statistics, and Appendix B provides the most recent version of the Illinois Administrative Procedure Act.

Information about the operations of the Joint Committee on Administrative Rules, and about State agency rules and rulemakings, are supplied to individual members of the General Assembly, members of the public, lobbyists, and organizations upon request. Requests include copies of rules, hearing transcripts, or status information regarding certain rules or types of rules. This information is transmitted promptly to the requesting entity.

MEMBERSHIP

The Joint Committee on Administrative Rules consists of twelve members who are appointed by the legislative leadership. Membership is equally apportioned between the two houses and the two political parties. Two co-chairs are selected by the members of the Committee. The co-chairs cannot be members of the same house or the same political party. The members also select a vice-chair and a secretary.

The members receive no compensation for their services, but are reimbursed for travel expenses. The Committee maintains a full-time staff in Springfield. Legislators who presently serve on the Committee are listed on the first page of this report.

Former members of the Committee are:

| | |
|--------------------|--------------------------|
| Arthur L. Berman | Thaddeus "Ted" Lechowicz |
| Prescott E. Bloom | Larry Leonard |
| Glen L. Bower | Richard Luft |
| Jack E. Bowers | John W. Maitland, Jr. |
| Woods Bowman | Lynn Martin |
| John W. Countryman | John M. Matejek |
| John Cullerton | Roger McAuliffe |
| Michael Curran | Thomas J. McCracken, Jr. |
| Richard M. Daley | A. T. "Tom" McMaster |
| Vince Demuzio | Myron J. Olson |
| James H. Donnewald | David J. Regner |
| Jim Edgar | Jim Reilly |
| James Gitz | Philip J. Rock |
| Alan J. Greiman | George Sangmeister |
| Kenneth Hall | Frank D. Savickas |
| Carl E. Hawkinson | Sam Vinson |
| Jeremiah E. Joyce | Richard A. Walsh |
| Douglas N. Kane | Robert C. Winchester |
| Doris Karpziel | Kathleen Wojcik |
| Richard Kelly, Jr. | Harry "Bus" Yourell |
| Bob Kustra | |

REVIEW OF GENERAL RULEMAKING

State agencies proposed 582 general rulemakings during 1990. (See Table 1 for a breakdown of general rulemakings by agency and Table 11 for a comparison of general rulemaking from 1981 through 1990.) The Committee issued 67 objections and 51 recommendations to general rules (See Table 2) during the same period. The Committee also issued 17 objections to existing rules (See Table 4). Review of the rules by the Committee resulted in changes to the vast majority of the proposals. The changes varied from minor drafting and editing revisions to extensive, substantive rewrites of rules. This section of the report explains the general rulemaking process and the criteria used by the Committee in evaluating rules. Also included is a summary of some of the significant general rulemakings considered by the Committee in 1990.

General Rulemaking Process

Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as:

each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulemakings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms.

Rules must be promulgated pursuant to the Illinois Administrative Procedure Act in order to be enforced by a State agency. There are three methods for promulgating a rule. The first method is specified in Section 5.01 of the Act. Section 5.01(a) explains the "first notice," or public notice and comment requirements. Agencies must publish the text of proposed rules in the Illinois Register, a weekly publication of the Office of the Secretary of State, and accept public comments on the rulemaking for the length of time specified in the notice which must accompany the text. At least 45 days' notice of the intended rulemaking action must be given to the public. This time is called the "first notice period," and it begins on the day that the notice of general rulemaking appears in the Illinois Register. The primary purpose of the first notice period is to provide the regulated public with an opportunity to review and comment upon the rulemaking proposal.

Some agencies hold public hearings on their proposals in order to solicit comments. Section 5.01 also provides that agencies must hold public hearings whenever the agency finds that a hearing would elicit public comments which might not otherwise be submitted, or if a request for a hearing is made by 25

interested persons, an association representing at least 100 persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government, and is received by the agency within 14 days after publication of the rulemaking in the Illinois Register.

After the expiration of the "first notice period," agencies are required to submit the proposed rules, along with any changes made in these rules during the first notice period, to the Joint Committee on Administrative Rules for review. Agencies submit this information in the form of a "second notice," which must include the text and location of any changes made in the rule, a final regulatory flexibility analysis, which reports the effects of the rule on small businesses, an evaluation of comments received regarding the rule during the first notice period, an analysis of the anticipated effects of the rule, the justification and rationale for the rule, and, if requested by the Committee, an analysis of the economic and budgetary effects of the rule.

The Committee reviews the rule based upon the criteria outlined in the Committee's operational rules (1 Ill. Adm. Code 220). These criteria include legal and rulemaking authority, compliance with legislative intent and statutory authority, compliance with State and federal constitutions and other laws, adequacy of standards and criteria for the exercise of discretionary powers, clarity, consideration of the economic and budgetary effects of the rule, compliance with the Regulatory Flexibility Law and the Illinois Administrative Procedure Act, and compliance with the agency's rulemaking requirements. Pursuant to these review criteria, the Committee raises issues regarding the rules.

If all issues are resolved, the Committee will certify no objection to the rule, which enables the agency to adopt the rule by publication of the rule in the Illinois Register and filing an official copy of the rule with the Office of the Secretary of State. If the issues are not resolved, they are presented in the form of recommendations for Committee action. The types of action recommended include objection, recommendation, suspension, or legislation. Table 3 breaks down the number of objections and recommendations issued by the Committee by type. If objections are voted by the Committee, they are published in the Illinois Register and the agency must respond to the objection within 90 days by modifying the rule, refusing to modify the rule, or withdrawing the rule. The response must be presented to the Committee and published in the Illinois Register, after which the rule may be adopted. Agencies are also requested to respond to Committee recommendations. Responses to recommendations are then published in the Illinois Register and evaluated by the Committee. Agency responses to both objections and recommendations may result in additional Committee action if the Committee feels the issue warrants it.

General Rulemaking in 1990

Fifty-two State agencies proposed 582 general rulemakings in 1990 (See Table 1). The Department of Public Aid adopted more general rules than any other State agency (17% of the total). Other State agencies with a great deal of

rulemaking activity included the Pollution Control Board (10%), the Department of Public Health (9%), the Department of Conservation (8%), the Illinois Racing Board (7%), the Department of Revenue (6%) and the Department of Rehabilitation Services (5.5%).

Table 3 breaks down the Committee's objections and recommendations to general rulemakings by type. The most common objection to general rules was giving retroactive effect to adopted rulemakings or prior implementation of policy before rulemaking was adopted. The Committee issued twenty objections (29.8% of the total) on this basis in 1990. Two other common objections were that the general rulemaking violated Section 4.02 of the Illinois Administrative Procedure Act, which requires State agencies to include precise standards in rules which implement discretionary authority, or that the rulemaking lacked statutory authority. These types of objections accounted for 13.4% each of the total objections. The most common recommendation issued in 1990 occurred when the Committee recommended that an agency submit policy that was not currently in rules and a timetable for rulemaking to the Committee. Twenty recommendations (39.2% of the total) were issued on this basis. Another common recommendation (27.4% of the total) was that the agency initiate rulemaking.

Table 4 breaks down the Committee's objections to existing rules by agency, and Table 5 breaks down these objections by type. The Committee issued seventeen objections and two recommendations to existing rules. Thirteen of those objections were issued based on the lack of standards in a Department of Nuclear Safety rule. Three objections were issued because the Pollution Control Board rule conflicted with its authorizing statute and the remaining objection was based on the Conservation rule being incomplete. The recommendations were issued as a result of a complaint review of a State Fire Marshal rule, and suggested that the Office of the State Fire Marshal initiate rulemaking and seek legislation to clarify its statutory authority. These recommendations are discussed more thoroughly in the Complaint Review Program section of this annual report.

The text of the objections and recommendations issued by the Committee to general rules and rulemakings during 1990 is included in another Committee publication entitled 1990 Index of Objections and Recommendations.

Significant General Rulemakings

Summarized in this section are several of the most important general rulemakings and Committee objections and recommendations issued in 1990.

Department of Professional Regulation

The Department proposed amendments to "Psychologist Registration Act" (68 Ill. Adm. Code 1400) which deleted provisions on program approval and replaced those provisions with education standards to be used by the Department in evaluating the education and experience of applicants for licensure under the Clinical Psychologist Licensing Act. The rulemaking

provided education requirements including completion of seven core courses in specified subject areas, additional course requirements to be met under certain circumstances, and a requirement relating to the establishment of residency in an educational institution by an applicant.

At its March 7, 1990 meeting, the Committee issued two objections to the Department's rules, as well as voted to prohibit the filing of several sections of the rule with the Secretary of State. The Committee objected to the Department's rules because the requirement that certain doctoral programs have a one-year residency requirement conflicted with Sections 10(3)(b) and (5) of the Clinical Psychologist Licensing Act (Act) (Ill. Rev. Stat. 1987, ch. 111, par. 5360). The rule required the programs of applicants who have graduated from doctoral programs that are equivalent to clinical psychology programs or are psychological in nature to have a one-year residency requirement. This requirement included enrollment at an educational institution in which the students pursue full-time graduate study with other students enrolled in that program, and specified that residency on campus is to be distributed over the days and weeks of an academic year.

By requiring an educational institution to have a one-year residency requirement in which all courses must be completed at the educational institution, the Department's rules conflicted with Sections 10(3)(b) and (5) of the Act. The Act required that at least one course in each of the seven specified core content areas be completed in actual attendance at a recognized college, university, or school whose graduates would be eligible for licensure under this Act. Courses in the seven core content areas were not required by the Act to be taken at the same educational institution, only at a recognized institution, while the Department's rules required all courses taken in the one year of residency to be taken at the same institution.

The Committee also objected to the Department's rules because the Department lacked the statutory authority to specify that an internship, practicum, and supervised experience required under Section 10 of the Act shall not be credited if obtained under the supervision of a person who received monetary payment or other consideration from the applicant. The Department stated that placing this limitation on the requirement for supervision safeguarded against unlicensed persons practicing psychology and ensures adequate supervision of students, interns and residents. However, the provision was contrary to the requirements of the Act. Section 10 of the Act required the completion of a practicum, internship, and two years of satisfactory supervised experience. Section 4(a) of the Act specified that supervision is provided by a licensed clinical psychologist and the student, intern, or resident does not receive remuneration for services provided.

The Committee also voted to prohibit filing of certain sections of the rulemaking with the Secretary of State for 180 days because the Committee believed the proposed rules constituted a serious threat to the public interest and welfare.

In response to the Committee's objections and the filing prohibition, the Department stated that it had prepared legislation (SB 1532) to clarify the intent of the Clinical Psychologist Licensing Act. The Department also agreed to modify the rules in response to the Committee's objections. The Department's modification was consistent with SB 1532, which was passed into

law and became effective September 7, 1990. Effective March 12, 1990, the Department adopted the sections of the rule not affected by the filing prohibition. At its July 26, 1990 meeting, the Committee voted to withdraw the filing prohibition. The sections subject to the filing prohibition were adopted by the Department and became effective July 30, 1990.

Department Financial Institutions

The Department of Financial Institutions proposed rules entitled "Title Insurance Act" (50 Ill. Adm. Code 8100) on January 5, 1990, to implement the Title Insurance Act which became effective January 1, 1990. Interim and final registration of title insurance companies, agents, and independent escrowees were specified. The rules further provided initial compliance and consumer protection measures.

At its meeting on May 8, 1990, the Committee issued four objections to the Department's rules based on the Department's lack of statutory authority. The Committee objected to the rules because the Department lacked the statutory authority to require that any reinsurance of liability under a title insurance policy, on risks located in Illinois, shall be obtained from a company certified by the Department. The Committee objected because the Department lacked the statutory authority to require that "no producer of title business or associate of a producer shall require, directly or indirectly, or through any officer, agent or affiliate, as a condition or agreement to furnishing any person or persons any loan, or extension thereof, credit, contract, lease or service that such producer or associate of a producer shall place, any title insurance business through any particular title agent or agents or title insurance company or companies." The Committee objected because of the lack of statutory authority to adopt a rule which details administrative procedures by which certified or registered parties may allege violations of the Title Insurance Act by other certified or registered parties, and the Department may direct the complainant and respondent to appear and submit evidence on the complaint before a hearing officer. Finally, the Committee objected to the rules because the reference to the phrase "or criminal action" was beyond the statutory authority of the Department pursuant to the Title Insurance Act.

The Committee suggested to the Department of Financial Institutions that if the Department believed it should be authorized to adopt a rule which requires that any reinsurance liability under a title insurance policy on risks located in Illinois be obtained from a company certified by the Department, the Department should seek legislation amending the Title Insurance Act to grant the Department the statutory authority to require certification of reinsurers.

The Department responded by stating that it was in the process of determining whether legislation was warranted. The Department also withdrew two sections of the rulemaking and modified two other sections in response to the Committee's objections. The Committee considered the Department's response at its July 26, 1990 meeting. The Committee voted to notify the Department that its modification of the rules in response to the Committee's objection concerning the lack of statutory authority to adopt a rule which details administrative procedures by which certified or registered parties may

allege violations of the Act and may direct the complainant and respondent to appear and submit evidence before a hearing officer did not remedy the objection. The Committee also voted to publish in the Illinois Register a Notice of Failure of Modification to Remedy Objection. The Department adopted these rules, effective May 21, 1990.

Department of Mental Health and Developmental Disabilities

The Department of Mental Health and Developmental Disabilities proposed rules entitled "Standards and Licensure Requirements for Community-Integrated Living Arrangements" (59 Ill. Adm. Code 115) to set forth service requirements and licensure requirements for community-integrated living arrangements (CILAs) for individuals with a disability. The rules set forth a description of services, individuals who may participate, responsibilities of persons providing service, standards for living arrangements, administrative requirements, staff training requirements and licensure requirements.

The Committee considered this rulemaking at its June 5, 1990, meeting and issued seven recommendations to the Department concerning the rule. The Committee recommended to the Department that it adopt a plan for the distribution of community living arrangements as required by the Community-Integrated Living Arrangement Licensure and Certification Act prior to the adoption of the proposed rules. The Committee recommended that the Department initiate rulemaking to consolidate its hearing rules in various Parts into one Part, which would include grounds and procedures for appealing a Department decision, procedures for conducting a hearing, and standards for departmental exercise of discretion in granting or denying an appeal.

The Committee recommended to the Department that it propose rules in the Illinois Register to include policies contained in its "Client Acceptance Policy for CILA Preferred Providers" and "Application for Preferred Providers", which are required of agencies certifying community-integrated living arrangements, prior to its adoption of the proposed rules. The Committee recommended to the Department that it propose rules pursuant to the Illinois Administrative Procedure Act to adopt the Procedures Manual for Preadmission Screening Agents, including preadmission screening guidelines which specifically involve screening procedures for placement of individuals in CILAs, and policy in all existing and draft Omnibus Budget Reconciliation Act (OBRA) forms in its rules. The Committee also recommended to the Department that it amend its rules entitled "Mental Health Clinic Program Standards and Provider Requirements" (59 Ill. Adm. Code 130) to incorporate policies not in rules, which are set forth in its copy of "Interim Provider Manual for the Mental Health Clinic Programs for Individuals with Mental Illness (May, 1990)" and "Mental Health Clinic Program Survey Instrument Interpretive Guidelines (Revised 6-89)".

Finally, the Committee requested that the Department provide the Committee with an informational memorandum explaining what has been or is going to be done to fulfill the potential policy commitments made to the Illinois Department of Public Aid pursuant to an Inter-Agency Agreement between the two departments so that such commitments can be reviewed for potential impact on

the rulemaking activities of the Department. The same request was made of the Department of Public Aid.

The Department's responses to the Committee's recommendations were considered at the October 11, 1990 meeting. The Department responded by: providing a copy of the state plan for the distribution of community integrated living arrangements and agreeing to initiate rulemaking to consolidate its hearing rules, stating that the Department is studying the issue of including policies contained in its "Client Acceptance Policy for CILA Preferred Providers" and "Application for Preferred Providers" in rules, stating it did not believe that it would be practical to propose rulemaking on the preadmission screening manual and OBRA forms until after the federal Health Care Financing Administration adopted final policies and procedures concerning this program, stating that amendments including policies in the Department's "Interim Provider Manual for the Mental Health Clinic Programs for Individuals with Mental Illness (May 1990)" and "Mental Health Clinic Program Survey Instrument Interpretive Guidelines" are anticipated in December 1990, and agreeing to provide an informational memorandum concerning what steps have been taken to fulfill the potential policy commitments made to the Department of Public Aid. The Department of Public Aid did not respond to the request for an informational memorandum concerning policy commitments. The Committee voted to monitor the Department's agreements to pursue rulemaking, and requested timetables for the initiation of rulemaking and the provision of the informational memorandum. The Department adopted these rules, effective July 1, 1990. In October 1990, the Department provided the requested timetables and informational memorandum. No further action has been taken.

TABLE 1
GENERAL RULEMAKING BY AGENCY

| | |
|--|----|
| Aging, Department on | 5 |
| Agriculture, Department of | 7 |
| Alcoholism and Substance Abuse, Department of | 1 |
| Attorney General | 1 |
| Auditor General | 2 |
| Banks and Trust Companies, Commissioner of | 4 |
| Carnival-Amusement Safety Board | 1 |
| Central Management Services, Department of | 14 |
| Children and Family Services, Department of | 7 |
| Commerce and Community Affairs, Department of | 19 |
| Commerce Commission, Illinois | 14 |
| Community College Board, Illinois | 3 |
| Comptroller | 2 |
| Conservation, Department of | 43 |
| Consortium for Educational Opportunity | 2 |
| Corrections, Department of | 7 |
| Criminal Justice Information Authority | 2 |
| Education, State Board of | 10 |
| Elections, State Board of | 3 |
| Employment Security, Department of | 11 |
| Environmental Protection Agency | 6 |
| Financial Institutions, Department of | 2 |
| Fire Marshal, Office of the State | 4 |
| Guardianship and Advocacy Commission | 1 |
| Health Care Cost Containment Council, Illinois | 1 |
| Historic Preservation Agency | 1 |
| Housing Development Authority, Illinois | 3 |
| Industrial Commission, Illinois | 6 |
| Insurance, Department of | 13 |
| Labor, Department of | 3 |
| Labor Relations Board, Illinois State | |
| Labor Relations Board, Illinois Local (4) | 4 |
| Legislative Information System | 1 |
| Local Governmental Law Enforcement Officers Training Board, Illinois | 2 |
| Mental Health and Developmental Disabilities, Department of | 7 |
| Mines and Minerals, Department of | 5 |
| Nuclear Safety, Department of | 8 |
| Pollution Control Board | 54 |
| Professional Regulation, Department of (1) | 7 |
| Public Aid, Department of | 94 |
| Public Health, Department of | 48 |
| Racing Board, Illinois | 40 |
| Rehabilitation Services, Department of | 32 |

TABLE 1
GENERAL RULEMAKING BY AGENCY
(continued)

| | |
|--|-------|
| Retirement System, State Employees' | 2 |
| Retirement System, State Universities | 1 |
| Retirement System, Teachers' | 1 |
| Revenue, Department of | 35 |
| Rural Bond Bank, Illinois | 3 |
| Savings and Residential Finance, Commissioner of (3) | 1 |
| Secretary of State | 21 |
| State Police, Department of | 2 |
| Student Assistance Commission, Illinois (2) | 1 |
| Transportation, Department of | 15 |
| | <hr/> |
| TOTAL | 582 |

- (1) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (2) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.
- (3) The Commissioner of Savings and Loan Associations became the Commissioner of Savings and Residential Finance in 1990.
- (4) The Illinois State Labor Relations Board and Illinois Local Labor Relations Board proposed rules jointly in 1990.

TABLE 2
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|--|-------------------------|------------------------------|
| Aging, Department on | - | 2 |
| Children and Family Services, Department of | 1 | - |
| Commerce and Community Affairs, Department of | 1 | - |
| Conservation, Department of | - | 4 |
| Corrections, Department of | 1 | - |
| Education, State Board of | 6 | 2 |
| Environmental Protection Agency | 1 | 1 |
| Financial Institutions, Department of | 4 | 1 |
| Insurance, Department of | 2 | 1 |
| Labor, Department of | 3 | 1 |
| Mental Health and Developmental Disabilities, Department of | - | 11 |
| Mines and Minerals, Department of | - | 1 |
| Mining Board, State | - | 1 |
| Pollution Control Board | 2 | - |
| Professional Regulation, Department of | 2 | - |
| Public Aid, Department of | 35 | 14 |
| Public Health, Department of | - | 5 |
| Rehabilitation Services, Department of | 4 | 5 |
| Retirement System, State Employees' | - | 1 |
| Revenue, Department of | 2 | - |
| Secretary of State | 3 | 1 |
| TOTAL | <u>67</u> | <u>51</u> |

TABLE 3
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY TYPE

| Type of Objection | Number of Objections | Percentage of Total |
|---|----------------------|---------------------|
| Retroactive Effect/Prior Implementation | 20 | 29.8% |
| Lack of Statutory Authority | 9 | 13.4% |
| Standards and Criteria | 9 | 13.4% |
| Conflicts with Authorizing Statute | 8 | 11.9% |
| Violates General Rulemaking Procedures | 5 | 7.5% |
| Policy Not in Rules | 4 | 6.0% |
| Rules Not Clear/Terminology Vague | 4 | 6.0% |
| Rules Incomplete | 3 | 4.5% |
| Violates Economic and Budgetary Effects Analysis Requirements | 2 | 3.0% |
| Rules Do Not Reflect Agency Policy | 1 | 1.5% |
| Violates Legislative Intent | 1 | 1.5% |
| Violates Case Law | 1 | 1.5% |
| TOTAL | <u>67</u> | <u>100%</u> |

| Type of Recommendation | Number of Recommendations | Percentage of Total |
|---|---------------------------|---------------------|
| Submit Policy or Timetable to Joint Committee | 20 | 39.2% |
| Rulemaking | 14 | 27.4% |
| Agency Should Seek Legislation | 6 | 11.8% |
| Agency Review Policy in Rules | 5 | 9.8% |
| Agencies Resolve Conflicting Policies | 3 | 5.9% |
| Extend Second Notice/Postpone Consideration | 2 | 3.9% |
| Petition Federal Agency | 1 | 2.0% |
| TOTAL | <u>51</u> | <u>100%</u> |

TABLE 4
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY AGENCY

| Agency | Number of Objections | Number of Recommendations |
|-----------------------------------|----------------------|---------------------------|
| Nuclear Safety, Department of | 13 | - |
| Pollution Control Board | 3 | - |
| Conservation, Department of | 1 | - |
| Fire Marshal, Office of the State | - | 2 |
| TOTAL | <u>17</u> | <u>2</u> |

TABLE 5
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY TYPE

| Type of Objection | Number of Objections | Percentage of Total |
|------------------------------------|----------------------|---------------------|
| Standards and Criteria | 13 | 76.5% |
| Conflicts with Authorizing Statute | 3 | 17.6% |
| Rules Incomplete | 1 | 5.9% |
| TOTAL | <u>17</u> | <u>100%</u> |

| Type of Recommendation | Number of Recommendations | Percentage of Total |
|-------------------------|---------------------------|---------------------|
| Rulemaking | 1 | 50% |
| Agency Seek Legislation | 1 | 50% |
| | <u>2</u> | <u>100%</u> |

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Illinois Administrative Procedure Act includes two provisions which permit agencies to adopt rules by methods other than the general rulemaking process. These methods, emergency and peremptory rulemaking, allow agencies to adopt rules within a shorter period of time than is provided in the general rulemaking process. The use of emergency and peremptory rulemaking, which provides for the immediate implementation of a rule, is scrutinized by the Joint Committee on Administrative Rules because these processes circumvent the public notice and comment provisions of the Act. Twenty-four State agencies adopted seventy-one emergency rulemakings during 1990. (See Table 12 for a comparison of emergency rulemaking from 1983 through 1990.) In addition, three State agencies adopted peremptory rulemakings in 1990. (See Table 13 for a comparison of peremptory rulemaking from 1983 through 1990.) The Committee issued twenty-three objections and no recommendations to emergency rules (Tables 7 and 8) and no objections or recommendations to peremptory rules.

Emergency Rulemaking Process

Section 5.02 of the Act authorizes the use of emergency rulemaking if the promulgating agency determines that a situation exists which threatens the public interest, safety or welfare, and which requires the adoption of a rule on fewer days' notice than is required for general rulemaking. Emergency rules can become effective immediately and can remain in effect for a maximum of 150 days. Agencies which want to keep rules adopted on an emergency basis in effect for a longer period of time must propose and adopt the rule using the general rulemaking provisions of the Act. Certain restrictions are placed upon the use of emergency rulemaking because there is no notice and comment period or prior review by the Committee. First, the emergency rule can only contain those provisions which are in direct response to the emergency situation. Second, an agency cannot adopt an emergency rule that has "substantially the same purpose and effect" more than once in any 24-month period. Third, the agency must inform the affected public of the emergency rule. Through the emergency rulemaking procedures, the Illinois Administrative Procedure Act provides agencies with necessary flexibility to respond to emergency situations, but balances this with the temporary nature of the rule and the restrictions imposed.

Emergency Rulemaking in 1990

Twenty-four State agencies adopted seventy-one emergency rulemakings in 1990. The Department of Public Aid adopted more emergency rules than any other State agency, with eighteen rules, which accounted for 26% of the total. The Department of Public Health adopted thirteen emergency rules (19% of the total), the Department of Central Management Services and the Illinois Industrial Commission each adopted four emergency rules (6% of the total). Most emergency rules were justified on the basis of a statutory change, either state or federal, a delay in implementation of which would constitute a threat to the public interest, safety or welfare.

Table 8 breaks down the Committee's objections to emergency rulemakings by type. There were no recommendations issued in 1990. The most common objection to emergency rules, which accounted for 65.2% of the total, was that the State agency which adopted the emergency rule created the emergency either through action or inaction. The Illinois Supreme Court held in Senn Park Nursing Center v. Miller, 104 Ill. 2d 169 (1984), that an agency-created emergency could not justify the use of emergency rulemaking. Another common objection was that the rule had a retroactive effect or prior implementation. This occurs when the agency implements policy in the rule prior to adopting the rule, or the agency makes the rule effective prior to its being filed with the Secretary of State. The Committee issued four objections (17.4% of the total) on this basis in 1990.

The text of the objections issued by the Committee to emergency rules during 1990 is included in another Committee publication entitled 1990 Index of Objections and Recommendations.

Significant Emergency Rulemaking

Summarized in this section are several of the most important emergency rulemakings and Committee objections issued during 1990.

State Board of Education

The State Board of Education adopted emergency amendments to "Special Education" (23 Ill. Adm. Code 226), effective June 26, 1990. The amendments limited denials of hearing requests to those based on nonresidency. The timeline for appeal of a Level I Hearing Order was changed from a 15-day to a 30-day time limit. The allowable period of time for suspensions and expulsions of special education students was decreased. Parental consent was required only for an initial evaluation, with advance notification to parents of the district's intent to reevaluate a student. The identification of children as "educationally handicapped" was not allowed. The rulemaking provided that after September 1, 1991, all students previously eligible for special education in this category would be reevaluated to determine their continued eligibility by virtue of some other characteristic or combination of characteristics. Placement after development of an individualized education program must be determined only after the program had been written. The amendments also required that only one person be appointed as surrogate parent.

At its August 21, 1990 meeting, the Committee issued two objections to the Board's emergency rule. The Committee objected to the emergency rules because, contrary to the requirements of Section 5.02 of the Illinois Administrative Procedure Act, any emergency which may have existed was created solely by the failure of the Board to act in a timely manner to promulgate rules pursuant to the general rulemaking provisions of Section 5.01 of the Illinois Administrative Procedure Act. The Board was notified in October 1989, by the U.S. Department of Education that it must revise certain regulations no later than July 1, 1990. The State Board explained that it did not have a complete understanding of the modifications required by the Office of Special Education in time to utilize the regular rulemaking procedures. The State Board further explained that its failure to have rules adopted by July 1, 1990, would jeopardize Illinois' annual federal allocation for special education.

The Committee also objected to the emergency rules because the State Board of Education lacked the statutory authority to specify that consent shall be obtained from the parent or guardian of a child before an initial evaluation is conducted but not before a reevaluation. The State Board and the Committee received extensive comments from parents of children in special education programs and from advocacy groups expressing concern about the State Board's interpretation of the School Code's provision concerning parental consent. According to the comments, the State Board had a choice between eliminating parental consent for reevaluation, and requiring the processing of parental refusals to consent to the reevaluation informally and, if necessary, through a Level I due process hearing. Previously the Board interpreted the School Code to mean that parental consent shall be obtained before conducting any reevaluation of a child, as evidenced by an emergency amendment adopted in 1978. The Committee felt that because this statutory language is unambiguous and has not been amended, it is improper for the State Board through the rulemaking process to alter the scope of the law. The Board responded by refusing to withdraw or modify the rule. The Board did state that it would amend its proposed permanent rulemaking concerning parental consent.

The Board revised the proposed rulemaking to provide for parental consent prior to a reevaluation of a child, except for the required triennial reevaluation consisting solely of components in the child's most recent evaluation. The identical proposed rules, which were published in the July 13, 1990 Illinois Register were discussed at the Committee's December 13, 1990 meeting. No objections or recommendations were issued to these rules. The emergency rules expired November 23, 1990.

TABLE 6
EMERGENCY RULEMAKING BY AGENCY

| | |
|---|----|
| Carnival-Amusement Safety Board | 1 |
| Central Management Services, Department of | 4 |
| Children and Family Services, Department of | 2 |
| Commerce and Community Affairs, Department of | 2 |
| Community College Board, Illinois | 1 |
| Conservation, Department of | 3 |
| Corrections, Department of | 3 |
| Education, State Board of | 2 |
| Elections, State Board of | 1 |
| Employment Security, Department of | 1 |
| Financial Institutions, Department of | 1 |
| Fire Marshal, Office of the State | 1 |
| Housing Development Authority, Illinois | 3 |
| Industrial Commission, Illinois | 4 |
| Labor, Department of | 1 |
| Mental Health and Developmental Disabilities, Department of | 2 |
| Pollution Control Board | 1 |
| Public Aid, Department of | 18 |
| Public Health, Department of | 13 |
| Revenue, Department of | 1 |
| Rural Bond Bank, Illinois | 3 |
| Savings and Residential Finance, Commissioner of | 1 |
| State Police, Department of | 1 |
| Student Assistance Commission, Illinois | 1 |
| | — |
| TOTAL | 71 |

TABLE 7
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULEMAKING
BY AGENCY

| <u>Agency</u> | <u>Number of Objections</u> | <u>Number of Recommendations</u> |
|--|---------------------------------|--------------------------------------|
| Carnival-Amusement Safety Board | 1 | - |
| Central Management Services, Department of | 2 | - |
| Commerce and Community Affairs, Department of | 1 | - |
| Corrections, Department of | 1 | - |
| Education, State Board of | 2 | - |
| Elections, State Board of | 1 | - |
| Higher Education, Board of | 1 | - |
| Public Aid, Department of | 10 | - |
| Public Health, Department of | 1 | - |
| TOTAL | <u>23</u> | <u>0</u> |

TABLE 8
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULES
BY TYPE

| <u>Type of Objection</u> | <u>Number of Objections</u> | <u>Percentage of Total</u> |
|--|---------------------------------|--------------------------------|
| Agency Created Emergency | 15 | 65.20% |
| Retroactive/Prior Implementation | 4 | 17.40% |
| Violates Emergency Rulemaking Procedures | 1 | 4.35% |
| Lack of Statutory Authority | 1 | 4.35% |
| Incomplete Rules | 1 | 4.35% |
| Portions of Rulemaking Not Related to Emergency | 1 | 4.35% |
| TOTAL | <u>23</u> | <u>100%</u> |

Peremptory Rulemaking Process

Section 5.03 of the Act authorizes the use of peremptory rulemaking only in very restricted circumstances. Rules adopted by use of peremptory rulemaking may become effective immediately, and remain in effect indefinitely. Certain restrictions are placed upon the use of peremptory rulemaking because there is no notice and comment period or prior review by the Joint Committee on Administrative Rules.

First, peremptory rulemaking can be used only if the rulemaking is specifically required by federal law, federal rules and regulations, court order, or in the case of pay rates, a collective bargaining agreement. Second, the federal law, federal rules and regulations, court order, or collective bargaining agreement must impose conditions which preclude compliance with the general rulemaking requirements. Third, the agency must not have any discretion regarding the content of the rule. Fourth, a notice of peremptory rulemaking must be filed with the Secretary of State for publication in the Illinois Register within 30 days after the change is required.

Peremptory Rulemaking in 1990

Only three agencies adopted ten peremptory rules in 1990. The Department of Agriculture's use of peremptory rulemaking during 1990 accounted for 50% of the total peremptory rulemakings adopted during the year. All peremptory rulemakings adopted by the Department of Agriculture amended the "Meat and Poultry Inspection Act" rules (8 Ill. Adm. Code 125). Peremptory rulemaking was required because the federal Meat and Poultry Inspection Act and the Illinois Act require the Department's rules to mirror federal regulations.

The Department of Central Management Services adopted four peremptory rulemakings (40% of the total) in 1990. Peremptory rulemaking was necessary to implement the terms of contracts resulting from collective bargaining agreements. The Committee issued one recommendation to "Pay Plan" in requesting that the Department provide the Committee with a copy of the collective bargaining agreement which required the promulgation of the peremptory rules.

The Department of Public Aid peremptorily adopted amendments to "Food Stamps" (89 Ill. Adm. Code 121) to implement changes in income eligibility standards, standard deductions and shelter care deductions required by the United States Department of Agriculture.

TABLE 9
PEREMPTORY RULEMAKING BY AGENCY

| | |
|--|----------|
| Agriculture, Department of | 5 |
| Central Management Services, Department of | 4 |
| Public Aid, Department of | <u>1</u> |
| TOTAL | 10 |

ECONOMIC IMPACT REVIEW

In January of 1988, the Joint Committee on Administrative Rules began including a review of economic impact forms for each rulemaking on the agenda of its monthly meetings. These forms fall into three categories: (1) an analysis prepared by the agency of the economic impact of a proposed rule on the regulated public and the agency's budget, (2) a determination by the agency and also by the Department of Commerce and Community Affairs concerning whether the proposed rule creates or expands a state mandate, and (3) an analysis by the Department of Commerce and Community Affairs of the impact of the proposed rule on small businesses and small municipalities.

The Illinois Administrative Procedure Act grants the Committee the authority to request from the agency an analysis of the "effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues". The Agency Analysis of Economic and Budgetary Effects form is used to ascertain the effects a rulemaking may have on these persons or entities. This form is requested of the agency by the Committee during the first notice period. The agency submits the completed analysis at the beginning of the second notice period.

The Illinois Administrative Procedure Act also requires agencies to consider the impact a rulemaking may have upon small businesses and small municipalities. The Business Assistance Office within the Department of Commerce and Community Affairs analyzes rulemakings for small business impact at the request of the agency. The Department of Commerce and Community Affairs then submits its small business impact analysis to the Committee at the beginning of the second notice period. Although Section 46.19d of "The Civil Administrative Code" requires the Office of Rural Community Development within the Department of Commerce and Community Affairs to "assess the fiscal impact of proposed rules upon small municipalities and work with agencies in developing flexible regulations through a regulatory review program", the Department does not analyze rulemakings for small municipality impact. In fact, the Department's proposed rules which would have implemented the statute requiring small municipality impact analysis were allowed to lapse by the Department. The Department stated that the reason for allowing these rules to lapse was that the Office of Rural Community Development, which is responsible for small municipality impact, is not currently funded or staffed.

If it appears during the first notice period that a rulemaking creates or expands a state mandate, the Committee requests the agency to complete a State Mandates Questionnaire, which is used to determine if any such impact exists. The Committee, at this time, also requests the Department of Commerce and Community Affairs to submit an analysis of possible impact upon state mandates. These analyses are submitted prior to, or at the beginning of, the second notice period. Committee staff examines the economic analyses for each rulemaking during the second notice period. The review is then presented to the Committee for consideration at its monthly meeting.

COMPLAINT REVIEW PROGRAM

Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act grant the Joint Committee on Administrative Rules the authority to review agency rules and policies. Section 7.04 allows the Committee to "undertake studies and investigations concerning rulemaking and agency rules" and requires that the Committee "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all State agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy." Section 7.07 of the Act authorizes the Committee to issue objections to existing rules and assigns to the Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

Part 260 of the Committee's operational rules (1 Ill. Adm. Code 260), outlines the complaint review procedure. Upon receipt of a complaint, an initial review is conducted to determine the need for a full complaint investigation. Most of the inquiries received by the Committee require basic information, such as copies of rules, explanations of the rulemaking process, or referrals to appropriate agencies. These inquiries are easily answered without a full investigation. Others, however, require more extensive research and study prior to formal Committee action.

One formal complaint review was commenced in 1990. The complaint involved the Office of the State Fire Marshal and is summarized below.

1990 COMPLAINT

Office of the State Fire Marshal

In January of 1990, the Committee began an investigation of a complaint lodged against the Office of the State Fire Marshal. The complaint alleged that the requirement found in the State Fire Marshal's rules that motels use electrical rather than battery-operated smoke detectors places an undue burden on existing motels which is not warranted.

The State Fire Marshal adopted rules governing smoke detectors, effective August 1, 1988. Section 100.7 of these rules incorporates by reference the National Fire Protection Association's Life Safety Code 1985 edition. The Life Safety Code is revised every three years and represents the work of technical committees. The Code contains a provision concerning fire protection in existing hotels and dormitories (Chapter 17), with different requirements for new buildings which are built after the standards are adopted. Section 17-3.4.4 pertaining to existing structures specifically requires smoke detectors powered from the building's electrical system unless the building has a corridor detection system. The corridor detection system is also an electrically-powered system, which includes smoke detectors placed in the corridors and connected to a control panel.

After the adoption of these rules, several motels expressed a concern that the cost of replacing their current battery-operated smoke detectors with electrical units was unduly burdensome without providing significantly greater protection. Installing electrical smoke detection systems in existing motels is especially burdensome to those motels constructed of entirely concrete block and metal studs, with minimal wood construction. Some of the motels that are part of well-known chains fall into this category.

It is confusing how the Smoke Detector Act applies to hotels. The Act originally included only a definition of a dwelling unit, which is defined as "a room or suite or rooms used for human habitation, and includes a single family residence as well as each living unit of a multiple family residence and each living unit in a mixed use building." In 1989, the Act was amended to include a definition of hotel, and to require that hotels have portable smoke detecting alarm devices for the deaf and hearing impaired. The Act is confusing concerning whether hotels are required to have any type of smoke detectors other than the required portable units for the deaf. It would appear that the intent of the Smoke Detector Act was that hotels were to have smoke detectors throughout and not just portable units for the hearing impaired. The fact that the State Fire Marshal's rules require smoke detectors throughout strengthens this interpretation. Therefore, a hotel must be a dwelling unit as defined by the Smoke Detector Act and Section 3(e) of the Act which provides that dwelling units in existence on July 1, 1988, have smoke detectors "either battery powered or wired into the structure's AC power line, and need not be interconnected" must be applicable. To interpret the Smoke Detector Act in any other way would appear to give the State Fire Marshal no authority over smoke detectors in hotels. However, this interpretation runs counter to the provision for motels and hotels found in the Fire Marshal's rules.

The Committee considered this issue at its February 8, 1990 meeting. The Committee voted to recommend that the Office of the State Fire Marshal amend its rules entitled "Fire Prevention and Safety" (41 Ill. Adm. Code 100) to provide that hotels in existence prior to July 1, 1988, may use either battery-powered or electrical smoke detectors as provided for dwelling units in Section 3(e) of the Smoke Detector Act. In addition, the Committee recommended to the Office of the State Fire Marshal that it propose legislation to amend the Smoke Detector Act to clarify that Section 3(e) of the Act, which provides that dwelling units in existence on July 1, 1988, may use either battery-powered or electrical smoke detectors, specifically applies to existing hotels as well as existing dwelling units. The Office of the State Fire Marshal notified the Committee on February 27, 1990, that it was not prepared to officially respond to the Committee's recommendations as it was in the process of soliciting input from fire service groups.

In April of 1990, two bills amending the Smoke Detector Act were introduced. House Bill 3640 sponsored by Representative Ryder and Senate Bill 1619 sponsored by Senator O'Daniel required existing hotels to be equipped with either battery-operated or electric smoke detectors in accordance with rules of the Office of the State Fire Marshal. The bills provided that new, reconstructed or substantially remodeled hotels shall have smoke detectors permanently wired into the hotel's AC power line, and provided that the Office of the State Fire Marshal shall adopt rules to implement the Act. In addition, both bills were amended to provide that smoke detectors in new,

reconstructed or substantially remodeled hotels shall be single station smoke detectors, and removed the requirement that smoke detectors be wired so that activation of one detector will activate all detectors in a hotel. House Bill 3640 failed to get out of committee. Senate Bill 1619 was amendatorily vetoed and the amendatory veto was accepted by the Senate. The bill was placed on the House Calendar on the order of amendatory veto and a motion was filed to accept the amendatory veto, but no action was taken and the bill died.

Senate Bill 1098, sponsored by Senator Demuzio concerning fire hydrants, was amended in the House on November 29, 1990, to require existing hotels to be equipped with either battery-operated or electric smoke detectors in accordance with rules of the Office of the State Fire Marshal; provide that new, reconstructed or substantially remodeled hotels shall have smoke detectors permanently wired into the hotel's AC power line; change provisions regarding applicability of other laws or regulations regarding smoke detectors; and provide that the Office of the State Fire Marshal shall adopt rules to implement the Act. This bill as amended passed the House on November 30, 1990, but the Senate never concurred with House amendments. Therefore, the bill died at the conclusion of the Eighty-sixth General Assembly. The Committee will continue to monitor legislation on this issue and the Office of the State Fire Marshal's subsequent rulemaking.

PUBLIC ACT REVIEW

Section 7.05 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1007.05) provides that the Joint Committee on Administrative Rules will maintain a review program to study the impact of legislative changes on agency rules and rulemaking. The Committee fulfills this statutory obligation through its public act review program. Under this program, the Committee staff reviews each public act filed during the year to determine whether the public act may possibly impact upon current agency rules or may require new rules. If it is determined that rulemaking may be needed, a letter and response form are sent to each such agency asking whether the agency has determined that rulemaking is necessary and the status of any such rulemaking. The Committee then monitors the agency's progress in fulfilling the rulemaking requirement. A primary goal of the Committee in this program is to ensure that the rulemaking is implemented in a timely manner, as required by Section 8 of the Illinois Administrative Procedure Act.

The Committee reviewed 474 public acts that were passed during 1990 by the 86th General Assembly. As a result of this review, it was found that 221 of the public acts may require rulemaking, and letters stating that rulemaking may be required by a particular public act were sent by the Committee to the forty-five State agencies. The following table summarizes the Committee's findings. The table lists, in alphabetical order by agency, each public act that may require new or amendatory rulemaking, the agency or agencies involved, and the agency's response to the Committee's letter regarding the need for rulemaking to implement the public act. Agencies are listed as agreeing or disagreeing that rulemaking is necessary for each particular public act. An agency listing of "no response" does not indicate that an agency does not intend to respond but rather that the agency's response has not been received before publication of this annual report.

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| <u>Agency & Public Act</u> | <u>Response</u> |
|--|-----------------|
| Agriculture | |
| 86-1022 | Disagree |
| 86-1173 | Disagree |
| 86-1397 | Disagree |
| Alcoholism & Substance Abuse | |
| 86-1316 | Disagree |
| 86-1342 | Disagree |
| 86-1360 | Disagree |
| 86-1391 | Disagree |
| Central Management Services | |
| 86-1004 | Disagree |
| 86-1014 | Agree |
| 86-1287 | Agree |
| 86-1363 | No Response |
| 86-1383 | Disagree |
| 86-1411 | Disagree |
| 86-1412 | Disagree |
| 86-1423 | Disagree |
| 86-1427 | Disagree |
| Children & Family Services | |
| 86-1167 | Agree |
| 86-1204 | Disagree |
| 86-1293 | Agree |
| 86-1296 | Disagree |
| 86-1311 | Disagree |
| 86-1357 | Agree |
| 86-1420 | Disagree |
| Commerce & Community Affairs | |
| 86-1175 | Agree |
| 86-1328 | Disagree |
| 86-1430 | Disagree |
| 86-1456 | No Response |
| Commerce Commission | |
| 86-1005 | Agree |
| 86-1344 | Disagree |
| 86-1424 | Disagree |
| Commissioner of Banks & Trusts | |
| 86-1157 | Disagree |
| 86-1178 | Disagree |
| 86-1291 | Disagree |
| 86-1295 | Disagree |
| 86-1449 | No Response |
| Commissioner of Savings & Residential Finance | |
| 86-1213 | Agree |
| Community College Board | |
| 86-1100 | Disagree |
| 86-1245 | Disagree |
| 86-1246 | Disagree |
| Comptroller | |
| 86-1314 | No Response |
| 86-1359 | No Response |
| 86-1446 | No Response |

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| Agency & Public Act | Response |
|--------------------------------------|-------------|
| Conservation | |
| 86-1091 | Disagree |
| 86-1188 | Agree |
| 86-1248 | Disagree |
| 86-1354 | Agree |
| 86-1453 | Disagree |
| 86-1468 | Disagree |
| 86-1469 | Disagree |
| Corrections | |
| 86-1090 | Agree |
| 86-1163 | Agree |
| 86-1168 | Disagree |
| 86-1182 | Agree |
| 86-1183 | Agree |
| 86-1206 | Disagree |
| 86-1221 | Disagree |
| 86-1227 | Disagree |
| 86-1242 | Disagree |
| 86-1263 | Disagree |
| 86-1281 | Disagree |
| 86-1320 | Disagree |
| 86-1373 | Agree |
| 86-1380 | Disagree |
| 86-1391 | Disagree |
| 86-1403 | Agree |
| 86-1412 | Disagree |
| Debt Collection Board | |
| 86-1425 | Agree |
| Emergency Services & Disaster Agency | |
| 86-1205 | Agree |
| Employment Security | |
| 86-1367 | Agree |
| Energy & Natural Resources | |
| 86-1363 | Disagree |
| Environmental Protection Agency | |
| 86-1026 | No Response |
| 86-1362 | No Response |
| 86-1363 | Agree |
| 86-1409 | Disagree |
| 86-1433 | No Response |
| Export Development Authority | |
| 86-1440 | No Response |
| Financial Institutions | |
| 86-1222 | Disagree |
| Gaming Board | |
| 86-1029 | Agree |
| Housing Development Authority | |
| 86-1052 | Agree |
| Human Rights | |
| 86-1004 | No Response |

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| Agency & Public Act | Response |
|---|-------------|
| Insurance | |
| 86-1154 | Agree |
| 86-1155 | Agree |
| 86-1156 | No Response |
| 86-1176 | Agree |
| 86-1186 | No Response |
| 86-1234 | Disagree |
| 86-1249 | No Response |
| 86-1322 | No Response |
| 86-1365 | Agree |
| 86-1407 | No Response |
| 86-1408 | No Response |
| 86-1434 | No Response |
| Liquor Control Commission | |
| 86-1279 | Disagree |
| Labor | |
| 86-1268 | Disagree |
| 86-1405 | Disagree |
| Local Governmental Law Enforcement Officers Training Board | |
| 86-1230 | Disagree |
| Lottery | |
| 86-1220 | Agree |
| Manufacturing Technology Alliance | |
| 86-1015 | No Response |
| Mental Health & Developmental Disabilities | |
| 86-1013 | Agree |
| 86-1190 | Disagree |
| 86-1385 | Disagree |
| 86-1402 | Agree |
| 86-1403 | Disagree |
| 86-1416 | Agree |
| 86-1417 | Disagree |
| Nuclear Safety | |
| 86-1044 | Disagree |
| 86-1050 | Disagree |
| 86-1341 | Agree |
| 86-1376 | Disagree |
| Professional Regulation | |
| 86-1007 | Agree |
| 86-1160 | Disagree |
| 86-1251 | No Response |
| 86-1276 | Disagree |
| 86-1283 | Disagree |
| 86-1290 | Agree |
| 86-1319 | Disagree |
| 86-1356 | Agree |
| 86-1396 | Agree |
| 86-1404 | Agree |
| 86-1472 | No Response |

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| Agency & Public Act | Response |
|-------------------------|-------------|
| Public Aid | |
| 86-1031 | Agree |
| 86-1219 | Agree |
| 86-1235 | Agree |
| 86-1347 | Agree |
| 86-1390 | Disagree |
| 86-1432 | Agree |
| 86-1454 | No Response |
| Public Health | |
| 86-1004 | No Response |
| 86-1013 | No Response |
| 86-1136 | Agree |
| 86-1187 | Agree |
| 86-1198 | Agree |
| 86-1205 | Disagree |
| 86-1261 | Disagree |
| 86-1292 | Agree |
| 86-1335 | Disagree |
| 86-1342 | No Response |
| 86-1345 | Disagree |
| 86-1351 | Disagree |
| 86-1355 | Disagree |
| 86-1377 | Disagree |
| 86-1384 | Disagree |
| 86-1390 | Agree |
| 86-1424 | Disagree |
| Racing Board | |
| 86-1458 | No Response |
| Rehabilitation Services | |
| 86-1008 | Agree |
| 86-1203 | Disagree |
| 86-1208 | Agree |
| 86-1218 | No Response |
| 86-1244 | Disagree |
| 86-1310 | Agree |
| Revenue | |
| 86-1033 | No Response |
| 86-1306 | Agree |
| 86-1389 | Agree |
| 86-1394 | Agree |

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| Agency & Public Act | Response |
|--------------------------------------|-------------|
| Secretary of State | |
| 86-1088 | Disagree |
| 86-1091 | Disagree |
| 86-1166 | Disagree |
| 86-1171 | Disagree |
| 86-1193 | Disagree |
| 86-1207 | Disagree |
| 86-1217 | Disagree |
| 86-1226 | Disagree |
| 86-1236 | Disagree |
| 86-1240 | Disagree |
| 86-1241 | Disagree |
| 86-1242 | Disagree |
| 86-1258 | Disagree |
| 86-1259 | Disagree |
| 86-1260 | Disagree |
| 86-1272 | Disagree |
| 86-1275 | Disagree |
| 86-1286 | Disagree |
| 86-1328 | Disagree |
| 86-1340 | Disagree |
| 86-1435 | Disagree |
| 86-1450 | Disagree |
| 86-1465 | Disagree |
| State Board of Education | |
| 86-1002 | Agree |
| 86-1045 | Agree |
| 86-1051 | Disagree |
| 86-1200 | Disagree |
| 86-1247 | Agree |
| 86-1249 | Disagree |
| 86-1256 | Agree |
| 86-1257 | Disagree |
| 86-1288 | Agree |
| 86-1312 | Disagree |
| 86-1323 | Disagree |
| 86-1332 | Disagree |
| 86-1334 | Disagree |
| State Board of Elections | |
| 86-1264 | Disagree |
| 86-1301 | No Response |
| 86-1348 | Disagree |
| State Fire Marshal | |
| 86-1270 | No Response |
| State & Local Labor Relations Boards | |
| 86-1395 | Disagree |

TABLE 10
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

| Agency & Public Act | Response |
|--|-------------|
| State Police | |
| 86-1209 | Disagree |
| 86-1223 | Disagree |
| 86-1226 | No Response |
| 86-1230 | Disagree |
| 86-1258 | Disagree |
| 86-1259 | Disagree |
| 86-1260 | No Response |
| 86-1272 | Disagree |
| 86-1275 | No Response |
| 86-1281 | Disagree |
| 86-1340 | Disagree |
| 86-1399 | No Response |
| State Toll Highway Authority | |
| 86-1164 | Agree |
| Student Assistance Commission | |
| 86-1249 | Agree |
| 86-1262 | Agree |
| 86-1315 | Agree |
| 86-1428 | Agree |
| Transportation | |
| 86-1005 | No Response |
| 86-1223 | Agree |
| 86-1232 | Disagree |
| 86-1368 | Disagree |
| Treasurer | |
| 86-1227 | Disagree |
| 86-1271 | Disagree |
| 86-1462 | No Response |
| Trustees of the University of Illinois | |
| 86-1189 | Disagree |

1990 LEGISLATIVE ACTIVITY

The passage of legislation that clarifies, as well as upholds, the intent of the General Assembly is a priority of the Joint Committee on Administrative Rules. The Committee also sponsors legislation to amend the Illinois Administrative Procedure Act to improve the oversight process for State agencies in Illinois.

The Committee's 1990 legislative initiative was a result of a subcommittee examination of exemptions to the Illinois Administrative Procedure Act. The subcommittee held a series of hearings during the summer and fall of 1989 to give agencies an opportunity to discuss with the subcommittee the retention or deletion of existing exemptions to the Illinois Administrative Procedure Act and also the need to create any new exemptions. The goal of the subcommittee throughout the meetings was to produce an agreed bill that would amend the applicability clause of the Illinois Administrative Procedure Act to include all current exemptions to the Act and delete obsolete exemptions so that the Illinois Administrative Procedure Act would accurately reflect how the rules review process works.

A bill was written by the subcommittee with advice from the affected agencies and was introduced during the 1990 spring session of the General Assembly. Senate Bill 1726, sponsored by Senator Woodyard and Senator Jones, was designed to clarify the applicability of the Illinois Administrative Procedure Act rather than leave provisions concerning applicability of the Act scattered throughout the statutes.

The spring session of the General Assembly was a budgetary session in which all substantive bills were subject to Rules Committee approval before they could be considered. Senate Bill 1726 was assigned to the Senate Rules Committee, but the Rules Committee did not rule the bill an emergency in need of immediate consideration. Therefore, no further action was taken. The Committee plans to introduce the bill again in a later session of the General Assembly.

PUBLICATIONS OF THE JOINT COMMITTEE
ON ADMINISTRATIVE RULES

In an attempt to aid state agencies in promulgating rules, and members of the general public in understanding rules and the rulemaking process, the Joint Committee offers the following publications:

"Illinois Regulation", the Committee's weekly newsletter summarizing the regulatory changes of State agencies, is currently distributed to all members of the General Assembly, State agency rules coordinators, lobbyists, businesses, chambers of commerce, libraries, government agencies, law firms, and others who are interested in rulemaking. The publication summarizes proposed and adopted rules according to subject area. "Illinois Regulation" is the result of the Regulatory Flexibility Law which became effective in 1982 and which required agencies to provide some flexibility in rules imposing a burden upon small businesses. In order to implement this law, small businesses are encouraged to raise issues and to suggest alternatives to rulemakings proposed by State agencies. "Illinois Regulation" helps inform businesses of agency rulemaking activity, and, thus, helps facilitate their playing a roll in the rulemaking process. The publication has also been expanded to include a summary of action taken by the Committee at each monthly meeting.

The Joint Committee on Administrative Rules has developed an index designed to be a useful research tool. The Committee has compiled the text of every objection and recommendation it has issued since the Committee's inception in 1978 into a set of volumes. Comprehensive indices to the volumes have been developed so that objections and recommendations can be located by agency or by Administrative Code citation. The actions are also classified by type so that all objections or recommendations issued on a particular basis (e.g. lack of statutory authority) can be located. The index system has contributed significantly to the ability of the Committee to give precedential value to past objections and recommendations. The 1990 volume of the Index and Text of Objections and Recommendations covering Committee action over the past year will be published in early 1991.

The publications and other materials prepared by the Committee during 1990 demonstrate the Committee's commitment to ensuring that the affected public is aware of State regulatory activities, and that State agencies fully consider the ramifications of such activities prior to implementation.

COURT DECISIONS

Court Decisions Pertaining To The Illinois Administrative Procedure Act

Section 7.05 of the Illinois Administrative Procedure Act requires that the Committee study the impact of court rulings and administrative actions on agency rules and rulemaking. In order to carry out this responsibility, the Committee reviews court decisions and Attorney General opinions, and monitors pending litigation which may affect administrative rulemaking. Several noteworthy decisions involving interpretations of the Illinois Administrative Procedure Act were issued recently. The following is a brief summary of those decisions.

In Coronet Insurance Company v. John E. Washburn, Director of Insurance of the State of Illinois, 146 Ill. Dec. 973, 558 N.E.2d 1307, 201 Ill. App.3d 633, the First District Appellate Court of Illinois held that an administrative agency may enact rules and regulations as limited by the authorizing statutory language; that an administrative rule carries with it the same presumption of validity as the statute; and a rule which is consistent with the spirit of the statute and furthers its purpose will be sustained. The Appellate Court also ruled that the Director of Insurance's alleged failure to give at least 45 days notice of a proposed rule to the general public did not constitute violation of the Illinois Administrative Procedure Act, since the Act provides that changes in the text of a proposed rule may be made during the first notice period and that such changes need not be published again prior to submission to the Joint Committee on Administrative Rules.

In Ron Smith Trucking, Inc. v. Sally Jackson, Director, Illinois Department of Employment Security, 142 Ill. Dec. 530, 552 N.E.2d 1271, 196 Ill. App.3d 59, the Fourth District Appellate Court held that administrative agencies may establish standards of conduct in applying statutes by either rulemaking or adjudication, and that the choice lies within the agency's sound discretion, but if the agency decides to adopt a rule, it must comply with the provisions of the Illinois Administrative Procedure Act. Ron Smith Trucking alleged that the Department is required to publish rules for matters involving agency discretion and that it did not implement any valid rule to determine whether a worker is an employee or independent contractor. The Department stated that it was not required to promulgate a rule for interpreting Section 212 of the Unemployment Act, which sets forth criteria for determining worker status, when there was existing case law which did just that.

In Kerr-McGee Chemical Corporation v. Illinois Department of Nuclear Safety, 149 Ill. Dec. 674, 561 N.E.2d 1370, the Fourth District Appellate Court ruled that Kerr-McGee would not be barred from asserting any of its objections to disputed rules promulgated by the Department pertaining to nuclear waste after they have been approved by the Nuclear Regulatory Commission, despite the statute which requires a challenge to an administrative rule based on noncompliance with the Illinois Administrative Procedure Act within two years of the effective date of the rule, because the limitation deals only with procedural challenges concerning the promulgation of rules. The subject of Kerr-McGee's complaint was not a procedural challenge, but rather that the rules are arbitrary, capricious and contrary to law. Kerr-McGee maintains

that if it waited until the Nuclear Regulatory Commission grants the Department the permission to regulate nuclear waste sites, it might never be able to challenge the rules according to the two-year limitation period on actions to challenge rules for noncompliance with Section 5 of the Illinois Administrative Procedure Act. Kerr-McGee did not challenge the rules on any procedural issue subject to the two-year limitation.

In Francisco Berrios v. Ray J. Rybacki, et al., 137 Ill. Dec. 706, 546 N.E.2d 651, 190 Ill. App.3d 338, the First District Appellate Court held that directives adopted by the Illinois Industrial Commission governing arbitration of worker's compensation claims were rules under the Illinois Administrative Procedure Act and thus, subject to notice and comment requirements. The Commission asserted that the directives known as the "Chicago Arbitration Rules" governed internal management of the Commission. The Appellate Court stated that the directives not only dictate internal policy for maintaining consistency among arbitrators, but also affect rights and interests of employers and employees. The Appellate Court reversed and remanded the case to the Circuit Court of Cook County, which stipulated that the "Chicago Arbitration Rules" will remain in effect with certain conditions set forth until the Commission promulgates them in accordance with the Illinois Administrative Procedure Act. The Commission published proposed rules in response to the Circuit Court Order in the November 16, 1990 issue of the Illinois Register.

Court Decisions From Other States

Recently there have been court decisions issued in both Idaho and Wisconsin concerning the legislative suspension or rejection of administrative rules. Both states have legislative committees similar to the Joint Committee on Administrative Rules, which review administrative rules and have the power to reject or suspend such rules. This power has been challenged in the courts based on the argument that it violates the Constitutional principle of separation of powers.

The Illinois Administrative Procedure Act contains a provision which allows the Committee to prohibit the filing of a proposed rule with the Secretary of State for 180 days, if it is determined that the rulemaking would be objectionable and would constitute a serious threat to the public, safety or welfare. The Committee may then introduce a joint resolution in the General Assembly stating that the General Assembly desires to continue the prohibition of the proposed rulemaking. If the joint resolution passes both houses, the Secretary of State may not accept the proposed rulemaking for filing. Although the Committee has voted to temporarily prohibit the filing of rulemaking several times, the Committee has never taken the steps necessary to permanently continue a filing prohibition.

In Mead v. Arnell, 1990 Opinion No. 36, the Idaho Supreme Court upheld the Legislature's authority to reject, by concurrent resolution, a rule of the Idaho Board of Health and Welfare. The Court stated that rules are not laws and that rulemaking authority is based on statute and not derived from the Constitution. Therefore, rejecting a rule is merely rescinding statutory authority, which does not violate the Constitutional principle of separation of powers.

In Martinez v. Department of Industry, Labor, and Human Relations, the Eighth Branch of the Circuit Court of Wisconsin upheld Wisconsin's Administrative Procedure Act, which allows the Wisconsin Joint Committee to Review Administrative Rules to temporarily suspend an agency rule by a majority vote of the Committee. The Court determined that the Committee's suspension power did not "unduly burden or substantially interfere" with the powers of the executive or judiciary, and does not violate the constitutional principle of separation of powers. An appeal is currently pending.

APPENDIX A
HISTORY OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES
AND THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

By the mid-1970's, Illinois had 65 major agencies and nearly 250 smaller boards and commissions. The courts had ruled that administrative rules have the effect of law, and decisions rendered by those bodies conceivably affected the lives of more Illinois citizens than any other in government. Yet, observers of the scene found that organization among these agencies was complex, duplicative and chaotic. Indeed, at the time, no single source could produce a complete organization chart or even a listing of all Illinois agencies, boards and commissions. The goals of good government had been clear for generations. Government is accountable to the people for the effective, efficient and economic delivery of services. Toward this end, the federal government had enacted the federal Administrative Procedure Act in the 1940's, and in September 1975, the Governor signed Public Act 79-1083, effective September 22, 1975, creating the Illinois Administrative Procedure Act.

The Illinois Administrative Procedure Act established four categories of administrative proceedings: rules, contested cases, licenses and rate-making. The Governor's message accompanying the signing of the Act pointed out that this legislation formalized some common procedures, such as public hearings on proposed rules. The message also called the public petition procedures innovative and endorsed the establishment of rulemaking requirements. However, it soon became apparent that the establishment of rulemaking requirements would conflict with Section 2 of the Act which exempted agencies from compliance with any part of the Act except as expressly stated in the law which created or conferred power upon that agency.

In 1977, Section 2 was amended by Public Act 80-1035 (House Bill 14, effective September 27, 1977) to make the Act applicable to every agency, except as otherwise specified by statute. Most agencies now cooperate in the rulemaking process. This has been particularly true since Illinois regulations were codified by the Office of the Secretary of State in January 1985. As a result, rulemaking is now more widely understood by both professionals and the affected public.

Public Act 80-1035 also created the Joint Committee on Administrative Rules in 1977. The function of the Committee under the amended Administrative Procedure Act can be broadly stated as an on-going review and comment function in relation to newly proposed rules, investigation and resolution of complaints arising from rulemaking, and review of new public acts that may require rulemaking. For too long, said the first Chairman of the Committee, Representative Harry Yourell, the legislature had been content to pass legislation without systematically ensuring that agencies charged with the task of implementing that legislation were properly interpreting and complying with the intent of the legislation. In addition to making the Act's rulemaking and hearing provisions applicable to all state agencies and the creation of the

Joint Committee on Administrative Rules, Public Act 80-1035 made several other changes in the Act. One of these changes was the creation of the Illinois Register, a weekly publication of the Secretary of State which informs the public of all rulemaking activity by State agencies.

The minutes of the monthly meetings during the first year show that the Committee dealt with issues commonly facing a new organization, such as staffing and office space, as well as substantive issues about rulemaking and interpretations of the Illinois Administrative Procedure Act. For example, within the first few months, the Committee had reviewed its powers and duties and, based on the separation of powers clause in the 1970 Illinois Constitution, found them to be advisory only. The Committee sent guidelines to all State agencies to assist them in complying with provisions of the Act and prepared an amendment to clarify that all boards of State institutions of higher education were affected by the Act. By the third meeting in January 1978, the Committee was reviewing proposed rules published in the Illinois Register. Objections were issued to several of the rules. At this time, all negotiations between the Committee and a rulemaking agency took place at the monthly meeting, a practice that on occasion resulted in very long meetings.

The question of court-ordered rule changes was first considered by the Committee in February 1978. A court had ordered an amendment to the Illinois Department of Public Aid's rule on physician services for medically necessary abortions for a public aid recipient. Legislation was drafted and presented at the March 23, 1978, meeting to establish a new "peremptory" category of rulemaking for rules required by court order or federal rules and regulations. It was not until a year and a half later that the Act was amended by Public Act 81-1044 (effective October 1, 1979) to authorize this category of rulemaking.

By March 1978, the Committee had established July 1, 1980, as the deadline for agencies to prepare and submit a compilation of all their rules. In addition, legislation was drafted to require that rules contain specific standards and criteria to permit the affected public to understand the basis on which agency discretion was to be used. This standards and criteria amendment did not become effective until July 1, 1980 (Public Act 81-1129). In March 1978, the Committee also discussed amending the Illinois Administrative Procedure Act to place the burden of proof upon agencies asserting the validity of contested rules in court cases involving rules which have been objected to by the Committee, whenever such agencies have refused to remedy Committee objections. This concept has yet to be enacted.

By the end of its first full year, the Committee had reviewed nearly 500 rulemakings and prepared a legislative package that contained 23 recommended bills. In its second year of operation, 1979, the Committee examined over 525 rulemakings, issued 65 statements of objection and implemented the five-year rules review program. Agency rulemaking increased in 1980 during which time the Committee reviewed nearly 700 proposed, emergency and peremptory rulemakings and completed 9 detailed reviews of 28 sets of existing rules. Agency rulemaking has generally continued to increase during the years that the Committee has compiled data. The following tables show a comparison of general, emergency, and peremptory rulemaking from 1981 (1983 for emergency and peremptory) through 1990 and illustrate the rulemaking activity of State agencies during that time.

The Illinois Administrative Procedure Act has been continually evolving since 1977. In addition to the creation of the Joint Committee on Administrative Rules as an oversight body, which became a Legislative Support Services Agency in 1984, the Act has been amended to deal with numerous problems which have arisen. One of the most significant has been the implementation of the small business and small municipality flexibility requirements imposed pursuant to Sections 3.10, 4.03, 5.01, and 7.06 of the Act. These Sections require agencies to consider the impact of rules upon small businesses and small municipalities and, if feasible, suggest alternatives to those rules. Several other legislative changes have been made in the Act to remedy specific problems. Public Act 84-469, effective January 1, 1986, provides that pay rates established pursuant to the Personnel Code can be amended using the peremptory rulemaking process within 30 days after such amendment is necessary due to a conflict between the rates and the terms of a collective bargaining agreement. Public Act 84-576, also effective January 1, 1986, prohibits agencies from using the peremptory rulemaking process to implement consent orders or other negotiated settlements. The Act also provides that emergency rulemaking may be used in these instances. Public Act 84-1329, effective September 9, 1986, permits the second notice period to be extended upon the mutual agreement of the Committee and the agency. Two new sections have been added to the Act. Section 5.04, effective January 1, 1985, provides that, under certain conditions, a rule can be automatically repealed, and Section 5a, effective July 1, 1986, provides for the publication of a regulatory agenda.

Several amendments to the Illinois Administrative Procedure Act were passed during the 85th General Assembly. Public Act 85-317 and Public Act 85-367 are identical. These acts amend the Illinois Administrative Procedure Act to permit a state agency to issue declaratory rulings concerning whether compliance with a federal rule will satisfy the purposes and provisions of the state agency's similar, applicable rule. Public Act 85-340 allows the Department of Revenue to incorporate federal rules or regulations by reference without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments, in circumstances where the Department is promulgating rules imposing taxes on or measured by income. Public Act 85-451 extends the exemption from the limitation on the number of emergency rules which may be adopted in a 24-month period to include emergency rules that make additions to and deletions from the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug and Cosmetic Act. Public Act 85-587 amends the definition of "small business" to include a corporation organized under the General Not for Profit Corporation Act of 1986. Public Act 85-1048, which amends Section 6.01 of the Illinois Administrative Procedure Act, provides that the Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including Board opinions, which the Board deems appropriate for publication.

Two changes in the Illinois Administrative Procedure Act became law during the 86th General Assembly. Public Act 86-599, effective September 1, 1989, provided that an agency that incorporates materials into its rules by reference need not make the incorporated materials available for copying if in so doing the agency would infringe upon another entity's copyright. The current statutory provision specifying that incorporated material must be available to the public from the source of the material remains unchanged.

This law was passed to remove a possible conflict for agencies whereby their compliance with the Illinois Administrative Procedure Act would result in violation of copyright laws. Public Act 86-203, effective August 14, 1989, amended the applicability clause of the Illinois Administrative Procedure Act (IAPA) to clarify the Pollution Control Board's exemptions from the rulemaking procedures of the IAPA. These exemptions currently appear in the Environmental Protection Act, and have been set forth in the IAPA to clarify the applicability of the IAPA to the rulemaking procedures of the Pollution Control Board. Thus, the Illinois Administrative Procedure Act will continue to evolve as problems concerning administrative rulemaking arise.

TABLE 11
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1990

| AGENCY | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|------|------|------|------|------|------|------|------|------|------|
| Abandoned Mined Lands Reclamation Council | 1 | - | - | 2 | - | 2 | - | - | - | - |
| Administrative Rules, Joint Committee on | 1 | 1 | - | - | - | 3 | 5 | - | - | - |
| Administrative Services, Department of (1) | 7 | 1 | - | - | - | - | - | - | - | - |
| Aggregate Mining Problems Study Commission | 1 | - | - | - | - | - | - | - | - | - |
| Aging, Department on | 6 | 4 | 4 | 6 | 3 | 2 | 1 | 3 | 4 | 5 |
| Agriculture, Department of | 16 | 24 | 18 | 41 | 15 | 11 | 26 | 21 | 16 | 7 |
| Alcoholism and Substance Abuse, Department of (2) | - | - | - | 2 | 5 | 6 | 3 | 6 | - | 1 |
| Attorney General | - | 3 | 2 | 3 | 2 | 2 | 2 | 3 | - | 1 |
| Auditor General | 1 | 4 | 1 | 3 | 1 | - | - | - | 1 | 2 |
| Banking Board of Illinois, State | - | - | - | - | - | - | - | 2 | - | - |
| Banks and Trust Companies, Commissioner of | - | 6 | - | - | - | 6 | 3 | 6 | 3 | 4 |
| Capital Development Board | - | 3 | - | 2 | 9 | 4 | 6 | 3 | 2 | - |
| Carnival-Amusement Safety Board | - | - | - | - | - | 2 | 3 | - | 2 | - |
| Central Management Services, Department of (1) | - | 3 | 16 | 18 | 10 | 14 | 11 | 11 | 11 | 14 |
| Children and Family Services, Department of | 1 | 26 | 10 | 23 | 14 | 22 | 3 | 9 | 5 | 7 |
| Cities and Village Municipal Problems Commission | 1 | - | - | - | - | - | - | - | - | - |
| Civil Service Commission | 2 | - | - | 2 | - | - | - | - | - | - |
| Civil Service Merit Board, University | 3 | - | 1 | - | - | - | - | - | - | - |
| Civil Service System, State Universities | - | - | - | 2 | 1 | 1 | 1 | 2 | 1 | - |
| Commerce and Community Affairs, Department of | 1 | 8 | 4 | 20 | 29 | 29 | 18 | 17 | 17 | 19 |
| Commerce Commission, Illinois | 10 | 21 | 19 | 43 | 22 | 20 | 86 | 24 | 26 | 14 |
| Commission Review Board | - | - | - | - | - | 1 | - | - | - | - |
| Community College Board, Illinois | - | 1 | 2 | 3 | 2 | 2 | 2 | 5 | 5 | 3 |
| Comptroller | 3 | 4 | 4 | 3 | 1 | 5 | 3 | 4 | 2 | 2 |
| Condominium Study Commission, Joint | 1 | - | - | - | - | - | - | - | - | - |
| Conservation, Department of | 108 | 33 | 34 | 36 | 34 | 33 | 27 | 24 | 35 | 43 |
| Cook County Local Records Commission | - | - | - | - | - | 1 | - | - | 1 | - |
| Corrections, Department of | 24 | 15 | 66 | - | 1 | 10 | 8 | 5 | 8 | 7 |
| County Problems Commission | 1 | - | - | - | - | - | - | - | - | - |
| Court of Claims | - | - | - | 1 | - | - | - | - | - | - |
| Criminal Justice Information Authority, Illinois | - | - | - | - | 1 | 1 | 2 | - | 1 | 2 |
| Dangerous Drugs Advisory Council | 2 | - | - | - | - | - | - | - | - | - |
| Dangerous Drugs Commission (2) | 2 | 3 | 3 | 2 | - | - | - | - | - | - |
| Development Finance Authority, Illinois | - | - | - | - | - | 4 | 1 | - | - | - |
| East St. Louis, Board of Trustees of the State | - | - | - | - | - | - | - | - | - | - |
| Community College of | - | 2 | 1 | - | 1 | - | - | - | - | - |

TABLE 11
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1990

| AGENCY | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|--|------|------|------|------|------|------|------|------|------|------|
| Education, State Board of | 8 | 3 | 7 | 5 | 12 | 30 | 12 | 9 | 10 | 10 |
| Educational Facilities Authority, Illinois | - | 2 | 1 | 1 | - | 2 | 1 | - | 1 | - |
| Educational Labor Relations Board, Illinois | - | - | - | 4 | 3 | - | - | 2 | 5 | - |
| Educational Opportunity, Illinois Consortium For | - | - | - | - | - | 1 | - | - | - | 2 |
| Elections, State Board of | 3 | 7 | 3 | 4 | 1 | - | 3 | - | 7 | 3 |
| Emergency Services and Disaster Agency | 2 | 9 | 7 | - | - | 3 | 2 | 2 | - | - |
| Employment Security, Department of (3) | - | - | - | 3 | 13 | 10 | 5 | 19 | 16 | 11 |
| Energy and Natural Resources, Department of | - | 2 | 1 | - | 3 | - | 2 | - | 1 | - |
| Energy Resource Commission | 1 | 1 | - | - | - | - | - | - | - | - |
| Environmental Protection Agency | 16 | 18 | 20 | 21 | 10 | 8 | 14 | 16 | 8 | 6 |
| Ethics, Board of | - | - | - | - | - | - | - | 1 | - | - |
| Experimental Organ Transplantation Procedures Board | - | - | - | - | 1 | 1 | - | 1 | 1 | - |
| Export Development Authority, Illinois | - | - | - | - | 1 | 1 | 1 | 1 | - | - |
| Fair Employment Practices Commission | - | - | - | - | - | - | - | - | - | - |
| Farm Development Authority, Illinois | - | 1 | 1 | 2 | 1 | 2 | 3 | 2 | - | - |
| Financial Institutions, Department of | 3 | - | 3 | 9 | 4 | 2 | 3 | 4 | 1 | 2 |
| Fire Marshal, Office of the State Governors of State Colleges and Universities, Board of | 1 | 7 | 3 | 5 | 3 | 3 | 5 | 1 | 4 | 4 |
| Governor's Purchased Care Review Board | - | - | - | - | - | - | - | 1 | 1 | - |
| Guardianship and Advocacy Commission | 1 | - | 1 | 1 | 1 | - | 1 | - | - | - |
| Health Care Cost Containment Council, Illinois | 1 | 2 | 2 | 1 | 3 | - | - | - | - | 1 |
| Health Coordinating Council, Statewide | - | - | - | - | 10 | 1 | 3 | 2 | 1 | 1 |
| Health Facilities Authority, Illinois | 2 | - | - | - | - | - | - | - | - | - |
| Health Facilities Planning Board | 1 | - | - | - | - | - | - | - | - | - |
| Health Finance Authority | - | - | - | 2 | 1 | 9 | 3 | 3 | 7 | - |
| Hearing Aid Consumer Protection Board | 1 | 1 | - | - | - | - | - | - | - | - |
| Higher Education, Board of | - | - | - | - | - | - | 1 | - | 1 | - |
| Higher Education Loan Authority, Illinois Independent | 5 | - | - | 20 | 5 | 3 | - | 1 | 6 | - |
| Historic Preservation Agency | - | - | 2 | 1 | 1 | 2 | 1 | - | - | - |
| Housing Development Authority, Illinois | - | - | - | - | - | - | - | - | - | 1 |
| Human Rights Commission | 1 | 1 | 3 | 3 | 5 | 1 | 1 | 1 | 1 | 3 |
| Human Rights, Department of | 5 | 4 | 3 | 1 | - | 1 | - | - | - | - |

TABLE 11
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1990

| AGENCY | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|--|------|------|------|------|------|------|------|------|------|------|
| Industrial Commission, Illinois | 2 | 3 | 1 | 2 | 7 | 2 | - | - | - | 6 |
| Insurance, Department of | 13 | 13 | 4 | 25 | 9 | 11 | 9 | 12 | 13 | 13 |
| Investments, Illinois State Board of | - | 1 | 2 | - | - | - | - | - | 1 | - |
| Labor, Department of (3) | 7 | 8 | 8 | 5 | 3 | 3 | 1 | 2 | 1 | 3 |
| Labor Relations Board, Illinois Local | - | - | - | 4 | 1 | 8 | - | 4 | - | - |
| Labor Relations Board, Illinois State | - | - | - | 4 | 1 | 8 | - | 4 | - | - |
| Labor Relations Board, Illinois State/Labor Relations Board, Illinois Local (10) | - | - | - | - | 1 | 8 | - | 4 | - | - |
| Law Enforcement Commission | 2 | - | - | - | - | - | - | - | - | 4 |
| Law Enforcement Merit Board, Department of | - | 1 | 1 | 4 | 1 | - | - | - | - | - |
| Legislative Information System | - | 2 | 1 | - | - | - | - | - | - | 1 |
| Liquor Control Commission, Illinois | - | - | 1 | - | - | - | - | 1 | - | - |
| Local Government Affairs, Department of | - | - | - | - | - | - | - | - | - | - |
| Local Government Records Commission | - | - | - | - | - | - | - | - | - | - |
| Local Governmental Law Enforcement Officers Training Board, Illinois | - | - | 4 | 1 | - | 2 | 1 | - | 2 | 2 |
| Lottery, Department of (5) | - | - | - | - | - | 2 | - | 2 | - | - |
| Medical Center Commission | - | - | - | - | - | - | - | - | - | - |
| Mental Health and Developmental Disabilities, Department of | 8 | 3 | 3 | 5 | 8 | 2 | 3 | 3 | 3 | 7 |
| Military Affairs, Department of (7) | - | - | - | - | - | - | - | 2 | - | - |
| Military and Naval Department (7) | - | - | - | - | 1 | - | - | - | - | - |
| Mines and Minerals, Department of | 5 | 6 | 6 | 4 | 7 | 49 | 7 | - | 22 | 5 |
| Mississippi River Parkway Commission | 1 | - | - | - | - | - | - | - | - | - |
| Natural Resources, Institute of | 2 | - | - | - | - | - | - | - | - | - |
| Nature Preserves Commission | - | - | 1 | - | - | - | - | - | - | - |
| Nuclear Safety, Department of | 2 | 3 | 3 | 4 | 3 | 19 | 7 | 7 | 8 | 8 |
| Nutrition, State Council on | 1 | - | - | - | - | - | - | - | - | - |
| Personnel, Department of (1) | 9 | 9 | - | - | - | - | - | - | - | - |
| Pollution Control Board. | 13 | 18 | 23 | 21 | 32 | 43 | 53 | 73 | 71 | 54 |
| Prairie State 2000 Authority | - | - | - | - | - | 2 | - | - | - | - |
| Prisoner Review Board | - | 1 | - | - | 1 | - | - | 2 | - | - |
| Professional Regulation, Department of (6) | - | - | - | - | - | - | - | 14 | 15 | 7 |
| Property Tax Appeal Board (4) | - | - | - | - | 1 | - | - | - | 1 | - |
| Public Aid, Department of | 66 | 40 | 86 | 67 | 94 | 82 | 87 | 107 | 67 | 94 |
| Public Health, Department of | 44 | 92 | 91 | 53 | 25 | 44 | 27 | 50 | 45 | 48 |

TABLE 11
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1990

| AGENCY | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|------|------|------|------|------|------|------|------|------|------|
| Racing Board, Illinois | 10 | 22 | 9 | 7 | 13 | 14 | 9 | 11 | 5 | 40 |
| Records Commission, State | - | - | - | - | - | - | - | - | 1 | - |
| Regents, Board of | 2 | - | - | - | - | - | - | - | 2 | - |
| Registration and Education, Department of (6) | 15 | 16 | 15 | 26 | 17 | 10 | 14 | - | - | - |
| Rehabilitation Services, Department of | 1 | 6 | 23 | 28 | 13 | 57 | 45 | 25 | 27 | 32 |
| Retirement System of Illinois, State Employees' | 3 | 4 | 1 | 2 | 3 | - | - | 1 | - | 2 |
| Retirement System of The State of Illinois, Teachers' | - | - | 1 | - | 2 | - | - | 1 | - | 1 |
| Retirement System, State Universities | - | - | - | - | - | - | - | - | 1 | 1 |
| Revenue, Department of (4)(5) | 45 | 14 | 11 | 9 | 7 | 24 | 19 | 20 | 24 | 35 |
| Rural Bond Bank, Illinois | - | - | - | - | - | - | - | - | - | 3 |
| Savings and Loan Associations, Commissioner of | 7 | 1 | 1 | 1 | 2 | 1 | 3 | 4 | 2 | - |
| Savings and Residential Finance, Commissioner of (9) | - | - | - | - | - | - | - | - | - | 1 |
| Scholarship Commission, Illinois State (8) | 11 | 4 | 2 | 1 | 14 | 10 | 13 | 5 | - | - |
| Secretary of State | 26 | 14 | 31 | 20 | 19 | 8 | 18 | 30 | 31 | 21 |
| Select Joint Committee on Regulatory Agency Reform | 2 | - | - | - | - | - | - | - | - | - |
| Sports Facilities Authority, Illinois | - | - | - | - | - | - | - | 2 | - | - |
| State Fair Agency | - | - | - | - | - | - | - | - | - | - |
| State Mandates Board of Appeals | - | 1 | - | - | - | - | - | - | - | - |
| State Police, Department of | - | 1 | 2 | 2 | 1 | 2 | 1 | 4 | - | 2 |
| State Police Merit Board, Department of | - | - | - | - | - | 2 | 2 | 2 | 2 | - |
| Student Assistance Commission, Illinois (8) | - | - | - | - | - | - | - | - | 9 | 1 |
| Transportation, Department of | 17 | 5 | 5 | 10 | 16 | 23 | 16 | 25 | 18 | 15 |
| Travel Control Board, Higher Education | 1 | 2 | - | - | 1 | - | - | - | - | - |
| Travel Control Board, Legislative | 1 | - | - | - | - | - | - | - | - | - |
| Travel Regulation Council | - | - | - | - | - | - | - | 1 | - | - |
| Treasurer | - | - | 1 | 1 | - | - | - | - | 4 | - |
| Trustees of Southern Illinois University, Board of | - | - | - | - | - | - | - | - | 1 | - |
| Trustees of the University of Illinois, Board of | 1 | - | 1 | 1 | 1 | 1 | - | 2 | 2 | - |
| Veterans' Affairs, Department of | 2 | - | 1 | 1 | - | 5 | 7 | - | - | - |
| Visit and Examine State Institutions, Commission to | 1 | - | - | - | - | - | - | - | - | - |
| TOTAL | 563 | 510 | 583 | 605 | 532 | 696 | 614 | 627 | 589 | 582 |

TABLE 11
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1981 THROUGH 1990
(continued)

- (1) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.
- (2) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drugs Commission, became a separate agency in 1984.
- (3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.
- (4) The Property Tax Appeal Board, once a division of the Department of Revenue, became a separate agency in 1985.
- (5) The Department of the Lottery, once a division of the Department of Revenue (Lottery Control Board), became a separate agency in 1986.
- (6) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (7) The Military and Naval Department became the Department of Military Affairs in 1988.
- (8) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.
- (9) The Commissioner of Savings and Loan Associations became the Commissioner of Savings and Residential Finance in 1990.
- (10) The Illinois Local Labor Relations Board and the Illinois State Labor Relations Board proposed rules jointly in 1990.

TABLE 12
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1990

| AGENCY | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|------|------|------|------|------|------|------|------|
| Abandoned Mined Lands Reclamation Council | - | - | - | 2 | - | - | - | - |
| Aging, Department on | - | - | - | - | - | - | 1 | - |
| Agriculture, Department of | - | 1 | 2 | 1 | 1 | 2 | 1 | - |
| Alcoholism and Substance Abuse, Department of (1) | - | 1 | 1 | 2 | 1 | 1 | - | - |
| Attorney General | - | - | 1 | - | - | - | - | - |
| Banks and Trust Companies, Commissioner of | - | - | - | 2 | - | - | - | - |
| Capital Development Board | - | - | 1 | - | - | - | - | - |
| Carnival-Amusement Safety Board | - | - | - | 1 | - | - | 1 | 1 |
| Central Management Services, Department of (2) | 3 | 13 | 6 | 6 | 4 | 8 | 3 | 4 |
| Children and Family Services, Department of | 1 | - | - | 1 | 1 | - | - | 2 |
| Citizens Council on Children | - | - | - | - | 1 | - | - | - |
| Commerce and Community Affairs, Department of | - | - | 6 | 5 | 2 | 1 | 8 | 2 |
| Commerce Commission, Illinois | 5 | 3 | 1 | 5 | 3 | 4 | 2 | - |
| Commission Review Board | - | - | - | 1 | - | - | - | - |
| Community College Board, Illinois | 1 | 2 | - | - | - | - | - | 1 |
| Comptroller | - | - | - | - | - | - | - | - |
| Conservation, Department of | 4 | 1 | 7 | 2 | 1 | 7 | 6 | 3 |
| Corrections, Department of | - | - | - | - | - | - | - | 3 |
| Criminal Justice Information Authority, Illinois | - | - | 1 | - | 1 | - | 1 | - |
| Dangerous Drugs Commission | - | - | - | - | - | - | - | - |
| Development Finance Authority, Illinois | - | - | - | 2 | - | - | - | - |
| Education, State Board of | 3 | - | 9 | 5 | 2 | - | 2 | 2 |
| Educational Labor Relations Board, Illinois | - | 4 | 1 | - | - | 1 | 1 | - |
| Educational Opportunity, Illinois Consortium For | - | - | - | 1 | - | - | - | - |
| Elections, State Board of | 1 | 2 | - | - | - | - | - | 1 |
| Emergency Services and Disaster Agency | - | - | - | - | 1 | - | - | - |
| Employment Security, Department of (3) | - | 3 | - | - | - | 4 | 5 | 1 |
| Environmental Protection Agency | - | 2 | 2 | 2 | 3 | - | 1 | - |
| Experimental Organ Transplantation Procedures Board | - | - | 1 | - | - | - | - | - |
| Export Development Authority, Illinois | - | - | - | 1 | - | - | - | - |

TABLE 12
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1990

| AGENCY | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|------|------|------|------|------|------|------|------|
| Farm Development Authority, Illinois | 1 | 1 | 2 | 3 | - | - | - | - |
| Financial Institutions, Department of | - | - | 1 | 1 | 1 | - | - | 1 |
| Fire Marshal, Office of the State | 1 | 2 | - | 2 | - | - | 3 | 1 |
| Governor's Purchased Care Review Board | - | - | - | - | - | - | - | - |
| Health Coordinating Council, Statewide | - | - | - | - | - | - | - | - |
| Higher Education, Board of | - | 1 | - | - | - | - | 1 | - |
| Higher Education Loan Authority, Illinois Independent | 1 | - | - | - | - | - | - | - |
| Housing Development Authority, Illinois | 1 | 1 | 1 | - | 1 | - | - | 3 |
| Human Rights, Department of | - | - | - | - | - | - | - | - |
| Industrial Commission, Illinois | - | 2 | 2 | 2 | - | - | - | 4 |
| Insurance, Department of | 3 | - | 1 | 5 | - | - | 1 | - |
| Investments, State Board of | - | - | - | - | - | - | 1 | - |
| Labor, Department of (3) | 3 | 3 | 2 | - | - | - | - | 1 |
| Labor Relations Board, Illinois Local | - | 4 | - | - | - | - | - | - |
| Labor Relations Board, Illinois State | - | 4 | - | - | - | - | - | - |
| Law Enforcement Merit Board, Department of | - | 2 | - | - | - | - | - | - |
| Legislative Information System | 1 | - | - | - | - | - | - | - |
| Local Governmental Law Enforcement Officers | 1 | - | - | - | - | - | - | - |
| Training Board, Illinois | 1 | - | - | 1 | - | - | - | - |
| Lottery, Department of | - | - | - | 2 | - | - | - | - |
| Mental Health and Developmental Disabilities, Department of | 1 | - | - | - | - | - | - | 2 |
| Mines and Minerals, Department of | 1 | - | - | - | - | - | - | - |
| Nuclear Safety, Department of | - | 2 | 1 | 1 | 1 | - | - | - |
| Personnel, Department of (2) | - | - | - | - | - | - | - | - |
| Pollution Control Board | 1 | 3 | 3 | 2 | - | 1 | - | 1 |
| Prairie State 2000 Authority | - | - | - | 2 | - | - | - | - |
| Professional Regulation, Department of (4) | 2 | 6 | 6 | 9 | 18 | 2 | 6 | - |
| Public Aid, Department of | 2 | 2 | 2 | 3 | 1 | 17 | 15 | 18 |
| Public Health, Department of | 2 | 1 | 2 | - | - | 18 | 3 | 13 |
| Racing Board, Illinois | - | - | - | - | - | 1 | 1 | - |
| Regents, Board of | 5 | 6 | 1 | 1 | 3 | - | - | - |
| Registration and Education, Department of (4) | - | - | - | - | - | - | - | - |

TABLE 12
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1990

| AGENCY | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|--|------|------|------|------|------|------|------|------|
| Rehabilitation Services, Department of | - | - | - | 3 | - | - | 4 | - |
| Retirement System of Illinois, State Employees' | - | 1 | 1 | - | - | - | - | - |
| Revenue, Department of | - | 1 | - | 2 | - | 4 | 2 | 1 |
| Rural Bond Bank, Illinois | - | - | - | - | - | - | - | 3 |
| Savings and Loan Associations, Commissioner of (6) | - | - | 1 | 1 | 1 | 4 | - | - |
| Savings and Residential Finance, Commissioner of (6) | - | - | - | 2 | - | - | - | 1 |
| Scholarship Commission, Illinois State (5) | 1 | - | - | 2 | 2 | 1 | - | - |
| Secretary of State | 3 | 3 | 6 | 2 | - | - | 1 | - |
| Sports Facilities Authority, Illinois | - | - | - | - | - | 2 | - | - |
| State Mandates Board of Appeals | - | - | 1 | - | - | - | - | - |
| State Police, Department of | - | - | - | 1 | - | - | - | 1 |
| State Police Merit Board, | - | - | - | 1 | - | - | - | - |
| Department of | - | - | - | - | - | - | 1 | - |
| Student Assistance Commission, Illinois (5) | - | - | - | - | - | - | - | 1 |
| Transportation, Department of | - | 1 | 1 | 1 | 2 | - | - | - |
| Travel Regulation Council | - | - | 1 | 1 | - | - | - | - |
| Treasurer | - | - | - | - | - | - | - | - |
| Trustees of the University of Illinois, Board of | 1 | - | - | - | - | - | - | - |
| Veterans' Affairs, Department of | - | - | - | 1 | - | - | - | - |
| TOTAL | 49 | 78 | 74 | 87 | 51 | 78 | 71 | 71 |

(1) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.

(2) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.

(3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

TABLE 12
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1983 THROUGH 1990

- (4) The Department of Registration and Education became the Department of Professional Regulation in 1988.
- (5) The Illinois State Scholarship Commission became the Illinois Student Assistance Commission in 1989.
- (6) The Commissioner of Savings and Loan Associations became the Commissioner of Savings and Residential Finance in 1990.

TABLE 13
COMPARISON OF PEREMPTORY RULEMAKING BY AGENCY
1983 THROUGH 1990

| AGENCY | 1983 | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 | 1990 |
|---|------|------|------|------|------|------|------|------|
| Aging, Department on | - | - | - | - | - | - | - | - |
| Agriculture, Department of | - | - | 9 | 10 | 9 | 7 | 5 | 5 |
| Central Management Services, Department of | - | - | - | 6 | 7 | 7 | 3 | 4 |
| Children and Family Services, Department of | - | 1 | - | - | - | - | - | - |
| Commerce Commission, Illinois | - | - | - | - | - | 2 | - | - |
| Comptroller | - | - | - | - | - | - | - | - |
| Conservation, Department of | - | - | 2 | - | - | - | - | - |
| Corrections, Department of | 1 | - | - | - | - | - | - | - |
| Education, State Board of | 1 | - | - | - | - | - | - | - |
| Employment Security, Department of (1) | - | - | 1 | - | - | - | - | - |
| Labor, Department of (1) | - | - | - | - | - | - | - | - |
| Nature Preserves Commission | - | - | - | - | - | - | - | - |
| Pollution Control Board | 10 | 11 | 9 | 14 | 10 | - | - | - |
| Public Aid, Department of | 3 | 9 | 2 | 3 | 4 | 2 | 1 | 1 |
| Public Health, Department of | - | 1 | - | - | - | - | - | - |
| Rehabilitation Services, Department of | - | - | - | - | 1 | 1 | - | - |
| Retirement System of Illinois, State Employees' | 1 | - | - | - | 1 | - | - | - |
| Revenue, Department of | - | - | - | - | 1 | - | - | - |
| Travel Regulation Council | - | - | - | - | - | - | 1 | - |
| Transportation, Department of | - | - | - | - | - | - | - | - |
| TOTAL | 16 | 22 | 23 | 33 | 33 | 19 | 10 | 10 |

(1) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

APPENDIX B
THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE. This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY. (a) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

(b) The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) legal opinions issued under Section 2-3.7 of The School Code, (3) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admissions standards and procedures, and (4) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act."

(c) Section 5 of this Act relating to procedures for rulemaking shall not apply to:

(1) rules adopted by the Pollution Control Board which, in accordance with Section 7.2 of the Environmental Protection Act, are identical in substance to federal regulations, or amendments thereto, implementing the following: Sections 3001, 3002, 3003, 3004, 3005 and 9003 of the Solid Waste Disposal Act; Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Sections 307(b), 307(c), 307(d), 402(b)(8) and 402(b)(9) of the Federal Water Pollution Control Act; and Sections 1412(b), 1414(c), 1417(a), 1421 and 1445(a) of the Safe Drinking Water Act;

(2) rules adopted by the Pollution Control Board which establish or amend standards for the emission of hydrocarbons and carbon monoxide from

gasoline powered motor vehicles subject to inspection under the Vehicle Emissions Inspection Law;

(3) procedural rules adopted by the Pollution Control Board governing requests for exceptions under Section 14.2 of the Environmental Protection Act;

(4) the granting by the Pollution Control Board, pursuant to an adjudicatory determination, of an adjusted standard for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of the Environmental Protection Act; and

(5) rules adopted by the Pollution Control Board which are identical in substance to the regulations adopted by the Office of the State Fire Marshal under clause (ii) of paragraph (b) of subsection (3) of Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils", approved June 28, 1919, as amended.

(d) Pay rates established pursuant to Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5.03 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981; Amended by PA 83-0891, effective November 2, 1983; Amended by PA 84-469, effective January 1, 1986)

Section 3. DEFINITIONS. As used in this Act, unless the context otherwise requires, the terms specified in Sections 3.01 through 3.12 have the meanings ascribed to them in those Sections. (PA 79-1083; Amended by PA 82-0783, effective July 13, 1982; Amended by PA 84-1452, effective January 5, 1987; Amended by PA 85-293, effective September 8, 1987)

Section 3.01. AGENCY. "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE. "Contested case" means an adjudicatory proceeding, not including ratemaking, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER. "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07 PERSON. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES. "Rate-making" or "rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE. "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10 SMALL BUSINESS. For the purpose of this Act, "small business" means a corporation organized under the "General Not For Profit Corporation Act of 1986", as amended, or a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50 full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982; Amended by PA 85-587, effective January 1, 1988)

Section 3.11. MUNICIPALITY. "Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code. (Added by PA 84-1452, effective January 5, 1987)

Section 3.12. SMALL MUNICIPALITY. "Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants which employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities. (Added by PA 84-1452, effective January 5, 1987)

Section 4. ADOPTION OF RULES; PUBLIC INFORMATION, AVAILABILITY OF RULES. (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. However, no Agency shall assert the invalidity of a rule which it has adopted pursuant to this Act when an opposing party has relied upon such rule.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the same time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981; Amended by P.A. 83-1387, effective January 1, 1985; Amended by P.A. 83-1453, effective January 1, 1985)

Section 4.01 REQUIRED RULES. (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and

4. a current description of the agency's rule making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. RULES IMPLEMENTING DISCRETIONARY POWERS -- STANDARDS. Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 81-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS AND SMALL MUNICIPALITY FLEXIBILITY. When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses or small municipalities, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

(1) Establish less stringent compliance or reporting requirements in the rule for small businesses or small municipalities.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses or small municipalities.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses or small municipalities.

(4) Establish performance standards to replace design or operational standards in the rule for small businesses or small municipalities.

(5) Exempt small businesses or small municipalities from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses or small municipalities to participate in the rulemaking process. The agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

(1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses or small municipalities.

(2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses or small municipalities.

(3) The direct notification of interested small businesses or small municipalities.

(4) The conduct of public hearings concerning the impact of the rule on small businesses or small municipalities.

(5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses or small municipalities.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Business Assistance Office of the Department of Commerce and Community Affairs when rules affect businesses. The Business Assistance Office shall prepare an impact analysis of the rule describing its effect on small businesses. The impact analysis shall be completed within the notice period as described in subsection (a) of Section 5.01. Upon completion of the analysis the Business Assistance Office shall submit this analysis to both the Joint Committee on Administrative Rules and to the agency proposing the rule. The impact analysis shall contain the following:

(1) A summary of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.

(2) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.

(3) An estimate of the economic impact which the regulation will have on the various types of small businesses affected by the rulemaking.

(4) A description of or a listing of alternatives to the proposed rule which would minimize the economic impact of the rule. Such alternative must be consistent with the stated objectives of the applicable statutes and regulations.

(Added by PA 82-492, effective January 1, 1982; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1452, effective January 5, 1987)

Section 5. PROCEDURE FOR RULE-MAKING. (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Section 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5.01. GENERAL RULEMAKING. In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;
2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;
3. A complete description of the subjects and issues involved;
4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and
5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register, shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period, and shall expire 45 days thereafter unless prior to that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45

days, or the agency has received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and, (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) After the expiration of second notice period, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. In addition, no rule or modification which contains an incorporation by reference under subsection (b) of Section 6.02 may be adopted and filed with the Secretary of State pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act unless the agency adopting and filing the rule is in receipt of written approval from the Joint Committee on Administrative Rules. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982; Amended by PA 82-783, effective July 13, 1982; Amended by PA 84-784, effective January 1, 1986; Amended by PA 84-1329, effective September 9, 1986)

Section 5.02 EMERGENCY RULEMAKING. "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that

finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rule making with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted pursuant to this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules which may be adopted in a 24 month period does not apply to emergency rules which make additions to and deletions from the Drug Manual pursuant to Section 5-5.16 of The Illinois Public Aid Code or the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug, and Cosmetic Act. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-22, effective July 18, 1985; Amended by PA 84-576, effective January 1, 1986; Amended by PA 85-451, effective September 17, 1987)

Section 5.03. PEREMPTORY RULEMAKING. "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-576, effective January 1, 1986)

Section 5.04 AUTOMATIC REPEAL OF RULES. A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published

in the Illinois Register not less than 30 nor more than 60 days prior to the effective date of the repeal. This Section shall not apply to any rules filed pursuant to Section 5.02 of this Act. (Added by PA 83-1387, effective January 1, 1985)

Section 5a. REGULATORY AGENDA. An agency may submit for publication in the Illinois Register a regulatory agenda to elicit public comments concerning any rule which the agency is considering proposing but for which no notice of proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of such rules. Each summary shall, in less than 2,000 words contain insofar as practicable:

- (a) a description of the rule;
- (b) the statutory authority the agency is exercising;
- (c) a schedule of the dates for any hearings, meetings or other opportunities for public participation in the development of the rule;
- (d) the date the agency anticipates submitting a notice of proposed rulemaking activity, if known;
- (e) the name, address and telephone number of the agency representative, knowledgeable on such rule, from whom any information may be obtained and to whom written comments may be submitted concerning such rule;
- (f) a statement as to whether the rule will affect small businesses as defined in this Act; and
- (g) any other information which may serve the public interest.

Nothing in this Section shall preclude an agency from adopting a rule which has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda; nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines. (Added by PA 84-954, effective January 1, 1986)

Section 6. FILING OF RULES. (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.

2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES. (a) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs.

(b) The Secretary of State shall accept for publication in the Illinois Register all Pollution Control Board documents, including but not limited to Board opinions, the results of Board determinations concerning adjusted standards proceedings, notices of petitions for individual adjusted standards, results of Board determinations concerning the necessity for economic impact studies, restricted status lists, hearing notices, and any other documents related to the activities of the Pollution Control Board that the Board deems appropriate for publication. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982; Amended by PA 83-638, effective September 21, 1983; Amended by PA 85-1048, effective January 1, 1989)

Section 6.02. INCORPORATION BY REFERENCE. (a) An agency may incorporate by reference, in its rules adopted in accordance with Section 5 of this Act, rules and regulations of an agency of the United States or rules, regulations, standards and guidelines of a nationally recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the rule, regulation, standard or guideline does not include any later amendments or editions. The agency adopting the rule, regulation, standard or guideline shall maintain a copy of the referenced rule, regulation, standard or guideline and shall make it available to the public upon request for inspection and copying at no more than cost. The agency is not required, however, to make the referenced rule, regulation, standard or guideline available for copying if in so doing the agency would infringe upon another entity's copyright. An agency may also at its discretion file a copy of the referenced rule, regulation, standard or guideline with the State Library. An agency may incorporate by reference such matters in its rules only if the agency, organization or association originally issuing the matter makes copies readily available to the public. This Section shall not apply to any agency internal manual.

For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules imposing taxes on or measured by income which include incorporations by reference of federal rules or regulations without

identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.

(b) As provided by this subsection, an agency may incorporate by reference in its rules adopted in accordance with Section 5.01 of this Act guidelines or standards of an agency of the United States, without publishing the incorporated material in full, provided that the incorporated material is readily available to the public. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the guideline or standard does not include any later amendments or editions. An agency may incorporate by reference such matters in its rules only if the agency of the United States issuing or distributing the matter, or the organization, association or other entity acting on behalf of the agency of the United States makes copies readily available to the public. The agency adopting the rule shall maintain a copy of the referenced guideline or standard and shall make it available to the public upon request for inspection and copying at no more than cost. The agency is not required, however, to make the referenced rule, regulation, standard or guideline available for copying if in so doing the agency would infringe upon another entity's copyright. An agency may also at its discretion file a copy of the referenced guidelines or standards with the State Library. Use of the incorporation by reference procedure under this subsection (b) must be approved by the Joint Committee on Administrative Rules prior to the submission of the written notice required pursuant to paragraph (b) of Section 5.01 of this Act. An agency seeking to adopt a rule containing incorporation by reference under this subsection (b) shall submit a written request to the Joint Committee on Administrative Rules. In determining whether to approve an incorporation by reference, the Joint Committee shall use the following standard: whether or not the material sought to be incorporated is readily available for public inspection. No rule which contains an incorporation by reference pursuant to this subsection (b) may be accepted by the Secretary of State for adoption and filing pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act, unless the agency is in receipt of written approval from the Joint Committee on Administrative Rules. (Added by PA 83-638, effective September 21, 1983; Amended by PA 84-784, effective January 1, 1986; Amended by PA 85-340, effective September 10, 1987; Amended by PA 86-599, effective September 1, 1989)

Section 7. CODIFICATION OF RULES - PUBLICATION. (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. Rules not so codified as of October 1, 1984, are void, shall be withdrawn by the Secretary of State from the permanent register of the rules, and shall not be published by the Secretary of State in either the Illinois Administrative Code or in the Illinois Register. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule

are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01(a) of this Act or prior to the publication of the notice required under subsection (b) of this Section. The State Library shall cooperate with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint

Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code as effective January 1, 1985. The Code shall be published on or before June 1, 1985, and the Secretary of State shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with the publication of the Illinois Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980; Amended by PA 83-555, effective January 1, 1984; Amended by PA 83-556, effective January 1, 1984; Amended by PA 83-1362, effective September 11, 1984)

Section 7.01. CERTIFICATION OF RULES FILED WITH THE SECRETARY OF STATE. (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within 3 working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after that date unless within such 60 day period the

issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this subsection (b), the Secretary of State shall send to the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. ESTABLISHMENT AS LEGISLATIVE SUPPORT SERVICES AGENCY - AGENDA - PUBLICATION OF INFORMATION - FEES. The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984.

When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981; Amended by PA 83-638, effective September 21, 1983; Amended by 83-1257, effective August 15, 1984)

Section 7.03. ADMINISTRATION OF OATHS OR AFFIRMATIONS - AFFIDAVITS OR DEPOSITIONS - SUBPOENA. (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of a majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE. The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of

the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer;

d. the agency's justification and rationale for the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE. The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. EXAMINATION OF PROPOSED RULE, AMENDMENT OR REPEAL OF RULE BY THE JOINT COMMITTEE - DETERMINATIONS - EVALUATION OF STATE FORMS. (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule which are consistent with the stated objectives of both the applicable statutes and regulations, and whether the rule is designed to minimize economic impact on small businesses.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within the second notice period the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available

issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

(i) The Joint Committee shall evaluate and analyze all State forms which have been developed or revised after the effective date of this amendatory Act of 1984 to ascertain the burden, if any, of complying with such forms by small businesses. Such evaluation and analysis shall occur during the Joint Committee's review conducted pursuant to Section 7.08 of this Act. In the event the Joint Committee determines that any such form is unduly burdensome to small businesses the Joint Committee may object to such form or make specific recommendations for change in such form. Objections to such forms shall be made in the manner prescribed in Section 7.07 of this Act. For the purposes of this subsection the terms "state form" and "form" shall mean any document or piece of paper used by the state agency requesting or transmitting information, printed or reproduced by whatever means, usually with blank spaces for the entry of additional information to be used in any transaction between the State of Illinois and private sector businesses. These include, but are not limited to, grant applications, licensing applications, permit applications, and requests for proposal applications, but do not include books, pamphlets, newsletters and intra-agency forms which do not affect the rights of or procedures available to persons or entities outside the State agency. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1329, effective September 9, 1986)

Section 7.06a. JOINT COMMITTEE STATEMENT ON PROPOSED RULE, AMENDMENT OR REPEALER, OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement

shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. EXAMINATION OF RULE BY THE JOINT COMMITTEE - DETERMINATIONS. (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by

Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. JOINT COMMITTEE STATEMENT ON RULE ADOPTED UNDER SECTIONS 5.02 OR 5.03 AND DEEMED OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 day period, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION OF RULES BY JOINT COMMITTEE - CATEGORIES. (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rule making;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. Economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective October 1, 1979)

Section 7.09. ADMINISTRATION OF ACT. The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY JOINT COMMITTEE. The Joint Committee shall

report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Research Unit, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 83-784, effective January 1, 1984)

Section 8. PETITION FOR ADOPTION OF RULES. (a) An agency shall, in accordance with Section 5, adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner.

(b) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083; Amended by PA 83-529, effective January 1, 1984)

Section 9. DECLARATORY RULINGS BY AGENCIES--OVERLAPPING REGULATIONS. (a) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

(b) Overlapping regulations. (1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.

(2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons therefor, and may issue a declaratory ruling to that effect.

(3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved, the agency shall so inform the petitioner and the Joint Committee on

Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5 to consider revising such rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.

(4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981; Amended by PA 85-317 and PA 85-367, effective September 11, 1987)

Section 10. CONTESTED CASES - NOTICE - HEARING. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES. (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 15 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083; Amended by PA 82-783, effective July 13, 1982)

Section 12. RULES OF EVIDENCE - OFFICIAL NOTICE. In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION. Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS. A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions

of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES - ATTORNEY FEES. (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 2-611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement which, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding which unduly and unreasonably protracted the final resolution of the matter in controversy.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982; Amended by PA 82-1057, effective February 11, 1983; Amended by PA 85-587, effective January 1, 1988)

Section 15. EX PARTE CONSULTATIONS. Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES. (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING. Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

Section 18. WAIVER. Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE. This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

